June 30, 1986

RULEMAKING ISSUE
(Affirmation)

SECY-86-195

For: The Commissioners

From: Victor Stello, Jr.
Executive Director for Operations

Subject: DENIAL OF PETITION FOR RULEMAKING CONCERNING THE NEED AND SAFETY OF SHIPMENTS OF SPENT NUCLEAR FUEL (PRM-71-10)

Purpose: To obtain Commission approval of denial of the petition

Category: This paper covers a minor policy matter requiring Commission approval.

Issue: Whether the Commission should initiate a new function to specifically approve individual spent nuclear fuel shipments, taking into account the need and safety of each shipment and affording a mechanism for public input to each approval decision.

Summary: The petitioner requests that the NRC expand the scope of its regulations pertaining to spent nuclear fuel transport "to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to the approval of the shipment and route." In support of this request, the petitioner alleges a number of deficiencies in the transportation regulatory program of the NRC and of the entire Federal regulatory system. The staff has examined those alleged deficiencies and the substance of public comments submitted in support of and in opposition to the petitioner's request, and has found the petitioner's justification insufficient for the requested changes.

Discussion: By letter dated December 13, 1984, Mr. Carl Sinderbrand, Assistant Attorney General of the State of Wisconsin, filed, on behalf of the State, a petition for rulemaking.

Contact:
D. Hopkins, RES
443-7878

8608180473
PUBLIC

The petitioner requested that NRC establish a regulatory process for the evaluation and approval of individual shipments of spent nuclear fuel proposed by licensees. The petitioner proposes a rule which would (1) prohibit unapproved shipments; (2) require an application for approval which demonstrates (i) that the applicant will satisfy safety, safeguards and routing requirements, (ii) that the shipment is necessary, (iii) that there are no unique risks along the proposed route, (iv) that alternatives to the shipment and route have been evaluated, and (v) that the proposed shipping cask will withstand all reasonably foreseeable incidents along the proposed route; (3) provide an opportunity for public participation in the approval decision; and (4) provide for adequate protection of the public health and safety.

Notice of receipt of the petition was published in the Federal Register (50 FR 4866) on February 4, 1985. Forty-four letters of comment were received and considered. Thirty of the 34 commenting State and local governments, public interest groups, and individuals supported the Wisconsin petition for the reasons given in the petition, while 10 commenting power and other industrial companies opposed the proposal as unnecessary, duplicative, and burdensome.

The petitioner alleges the following five deficiencies in the Federal regulatory system in support of its claim that NRC needs to establish a regulatory process for the evaluation and approval of individual shipments of spent nuclear fuel proposed by licensees:

1. No Federal agency considers the safety or environmental risks associated with selected routes;

2. No Federal agency requires adequate safeguards to protect the public in the event of an accident or other emergency;

3. The NRC does not regulate the carrier of spent nuclear fuel or consider its safety record;

4. No Federal agency considers the need for or propriety of individual shipments of spent nuclear fuel; and

5. The public has no opportunity for meaningful participation with respect to the decision to transport spent nuclear fuel.

The staff has evaluated each of these allegations and the public comments submitted in support of and in opposition to the petition. Public comments are included in Enclosure G. The staff's evaluation is documented in the Federal Register Notice of Denial. The results of that evaluation show that the petitioner's allegations are either not substantiated or, if true, are not sufficient justification for the new approval procedure called for in the petition. The staff concludes that NRC's existing regulation of the transportation of spent nuclear fuel, when viewed in the context of the combined programs of the NRC, DOT, DOE, FEMA, and the States, is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public. It is the staff view that the petition, having been inadequately justified, should be denied.

The staff notes that Senator Proxmire and Representatives Moody and Obey introduced identical legislation (S. 1927 and H.R. 3932) in late 1985 "to provide for State regulation of the transportation of high-level radioactive waste." The legislation would amend the Atomic Energy Act to accomplish many of the same objectives as the Wisconsin petition. An analysis of the legislation by the NRC staff, as requested by OCA, is found in Enclosure E.

Recommendation: That the Commission:

a. Approve the denial letter to the petitioner (Enclosure A);

b. Approve the Federal Register Notice of Denial (Enclosure B);

c. Note

1. That appropriate Congressional Committees will be informed by letter (Enclosure C).

2. That the notice of denial will be published in Nuclear Regulatory Commission Issuances.

3. That a public announcement will be issued (Enclosure D).

4. That the Commission's regulations in § 51.22 specifically exclude from environmental consideration all actions on petitions for rulemaking which relate to Part 71 approval procedures.

Victor Stello, Jr.
Executive Director for Operations

Enclosures: — IN BP.
A. Draft Denial Letter
B. Draft FR Notice of Denial
C. Draft Congressional Letter
D. Draft Public Announcement
E. H.R. 3932 and Staff Analysis
F. State of Wisconsin Petition
G. Public Comments - Commissioners, SECY, OGC & OPE only

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Thursday, July 17, 1986.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Thursday, July 10, 1986, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of July 21, 1986. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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6/30/86.

ENCLOSURE A

ENCLOSURE A

Draft Denial Letter

Carl A. Sinderbrand, Esquire
Assistant Attorney General
Department of Justice
State of Wisconsin
P.O. Box 7857
Madison, WI 53707

Dear Mr. Sinderbrand:

This letter responds to the petition for rulemaking (PRM-71-10), which you submitted to the Nuclear Regulatory Commission (NRC) on behalf of the State of Wisconsin in December 1984, requesting that the NRC expand the scope of its regulations pertaining to spent nuclear fuel transport to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to the approval of the shipment and route.

In support of the petition you alleged a number of deficiencies in the transportation regulatory programs of the entire Federal regulatory system and the NRC program in particular. These alleged deficiencies, as consolidated from the petition, can be described as follows:

1. No Federal agency considers the safety or environmental risks associated with selected routes;

2. No Federal agency requires adequate safeguards to protect the public in the event of an accident or other emergency;

3. The NRC does not regulate the carrier of spent nuclear fuel or consider its safety record;

4. No Federal agency considers the need for or propriety of individual shipments of spent nuclear fuel; and

5. The public has no opportunity for meaningful participation with respect to the decision to transport spent nuclear fuel.

NRC published a notice of receipt of your petition in the Federal Register on February 4, 1985, 50 FR 4866, and requested comments. Forty-four comments were received and were provided to you by letters dated April 24, 1985 from J. M. Felton and May 24, 1985 from John Philips.

The NRC has considered the petition and the public comments submitted in support and opposition to it. For the reasons specified in the enclosed Federal Register Notice, the Commission has found that the justification provided in the petition for the new procedure requested for individual approval of spent nuclear fuel shipments is insufficient for that purpose and that the suggested procedures would not significantly serve to improve the protection of the public against unreasonable risk from the transportation of radioactive materials. Therefore, your petition is denied.

Sincerely,

Samuel J. Chilk
Secretary of the Commission

Enclosure:
Federal Register Notice
Denying Petition

ENCLOSURE A

ENCLOSURE B

ENCLOSURE B

NOTICE OF DENIAL OF PETITION

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[Docket No. PRM-71-10]

The State of Wisconsin; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-71-10) filed by the State of Wisconsin. The petitioner requests that the NRC expand the scope of its regulations pertaining to spent nuclear fuel transport "to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to approval of the shipment and route." It is the NRC's conclusion that the new procedure requested in the petition is not justified by the arguments presented in the petition when considered together with the views and arguments of other persons who commented on the petition and in light of experience, testing, analysis, and other information. The Commission concludes that its existing regulation of the transportation of spent nuclear fuel, when viewed in the context of the combined programs of the NRC, the Departments of Transportation (DOT) and Energy (DOE), the Federal Emergency Management Agency (FEMA), and the States is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public. The Commission also concludes that the procedures suggested in the petition would not significantly serve

to improve the protection of the public against unreasonable risk from the transportation of radioactive materials.

ADDRESSES: Copies of correspondence and documents cited in this document are available for public inspection and copying for a fee at the NRC's Public Document Room at 1717 H Street, NW., Washington, DC. Copies of NUREG-0170 may be purchased by calling (202) 275-2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7878.

SUPPLEMENTARY INFORMATION:

I. Background

II. Issues Raised

III. Public Comments

IV. Consideration of Petition Issues

V. Consideration of Comment Issues

VI. NRC Conclusion

I. BACKGROUND

By letter dated December 13, 1984, Mr. Carl A. Sinderbrand, on behalf of the State of Wisconsin, filed with the NRC a petition for rulemaking which requested that the NRC amend its regulations to initiate a new procedure to specifically approve individual spent nuclear fuel shipments and to afford a mechanism for public input for each approval decision. The NRC published a notice of receipt of the petition on February 4, 1985 (50 FR 4866), including the full text of the petitioner's proposed amendment, and invited public comments.

NRC has never had a procedure for approving individual shipments of spent nuclear fuel. Under its regulatory program, the Atomic Energy Commission (AEC) issued specific licenses authorizing types of shipments, including a specified shipping cask, until 1973. Repetitive specific licenses were issued when more than one licensee used the same shipping cask.

In 1973 the AEC agreed to take the lead in reviewing and approving packages for all commercial radioactive material shipments except those limited to designated small quantities, while DOT exercised its authority in other areas. At that time, the procedure of issuing repetitive specific licenses was dropped and was replaced by the current system of approving designs of and quality assurance programs for packages which any licensee may use by registering as a user. This system was combined with a general license authorizing any Commission licensee to make shipments in an NRC-approved package provided the person is registered to use the package, has an NRC approved quality assurance program, and has certain specified documentation. The use of the general license eliminated a large paperwork burden on AEC and licensees alike, and has been proved by experience over the years to provide adequate control.

II. ISSUES RAISED

The petitioner proposes a rule which would (1) prohibit unapproved spent nuclear fuel shipments; (2) require an application for approval which demonstrates (i) that the applicant will satisfy safety, safeguards, and routing requirements, (ii) that the shipment is necessary, (iii) that there are no unique risks along the proposed route, (iv) that alternatives to the shipment and route have been evaluated, and (v) that the proposed shipping cask will withstand all reasonably foreseeable incidents along the proposed route; (3) provide an opportunity for public participation in the approval decision; and (4) provide for adequate protection of the public health and safety.

The petitioner alleges the existence of the following five conditions in support of its claim that NRC needs to establish a regulatory process for the evaluation and approval of individual shipments of spent nuclear fuel proposed by licensees:

1. No Federal agency considers the safety or environmental risks associated with selected routes;
2. No Federal agency requires adequate safeguards to protect the public in the event of an accident or other emergency;
3. The NRC does not regulate the carrier of spent nuclear fuel or consider its safety record;
4. No Federal agency considers the need for or propriety of individual shipments of spent nuclear fuel; and
5. The public has no opportunity for meaningful participation with respect to the decision to transport spent nuclear fuel.

III. PUBLIC COMMENTS

In response to the invitation for public comments on the petition for rulemaking, 44 comment letters were submitted to the NRC by State and local governments, individuals, public interest groups, and power and other industrial companies. Of the 21 comment letters from State and local governments, 18 supported the need for the new regulatory process or some variation of it. Those who expressed reservations cited undue hardship associated with the proposal, security problems, and undue delays associated with the proposed hearings. One Indian tribe noted the lack of any specific provision for involvement by Tribal governments. Six of the seven individual commenters supported the rule for the reasons stated in the petition. The one who expressed reservations cited the lack of justification for the proposal. All six public interest groups supported the proposal for the reasons outlined in the petition. The 10 power companies and other industrial organizations that commented opposed the petition citing lack of justification, duplication, undue burden, and lack of legal foundation. In summation, 30 commenters supported the petition primarily for the reasons given in the petition, and 14 commenters opposed the petition for lack of justification, duplication, security problems, undue burdens and delays, and lack of a legal foundation for the petitioner's proposal.

IV. CONSIDERATION OF PETITION ISSUES

The petitioner cites a number of allegations in support of its request that the NRC adopt the proposals in the petition.

1. Failure to consider safety or environmental risks of specific routes

In its first allegation, the petitioner, in speaking of spent nuclear fuel shipments over the last 18 months, states that "no federal agency has considered...the safety or environmental risks associated with the selected routes...." Petition at 4. Later, the petitioner argues that "the NRC does not independently consider the safety of the particular route, does not evaluate the potential safety and environmental risks of the shipment...." Id at 6. Finally, in describing what it considers to be "a significant gap in the regulatory program," the petitioner states that "no agency considers risks associated with specific routes." Id.

The petition would require that an applicant for spent nuclear fuel shipment approval evaluate alternatives to the proposed route and demonstrate that the proposed shipment, including its route, is the alternative which provides the least risk of radiological exposure to the public.

The DOT has specific regulations for the routing of spent nuclear fuel by road which require, with certain exceptions, that the carrier operate over preferred routes which include interstate highways and State-designated alternate routes. The routes are selected after consideration is given to minimization of radiological risk. The routing rule was upheld by the Second Circuit Court of Appeals in City of New York v. Department of Transportation, 715 F.2d 732 (2nd Cir. 1983), cert. denied, 104 S. Ct. 1403 (1984). In upholding the DOT regulation, the Court stated that the Hazardous Materials Transportation Act (HMTA) does not require that the safest means be used in transporting spent fuel or any other hazardous material, but only requires the DOT to promulgate rules that provide for adequate safety. Id. at 740. Thus, no Federal agency, under the HMTA, could require a licensee to show that the proposed shipment is the alternative which provides the least risk as long as the shipment provides for adequate safety as prescribed under the DOT routing rules.

The routing rule is based on the DOT's finding that the interstate highway system generally minimizes the risk of transporting spent nuclear fuel, and that State agencies can designate alternate routes in accordance with DOT guidelines for minimizing risk. The DOT has made a generic evaluation of highway routes and concludes that the interstate highway system should serve as the basic Federal framework for providing safe and efficient routes for transporting spent nuclear fuel by road. In addition to this generic evaluation by DOT of interstate and alternate routes available for spent nuclear fuel transportation, the NRC specifically evaluates and approves routes selected by licensees for safeguards purposes. These route approvals are not limited to individual shipments of spent nuclear fuel, but may be used for repetitive shipments.

For rail transportation, the DOT physically inspects rail track for safety when a rail route is used for transportation of spent nuclear fuel. The inspections are made before the start of a series of shipments over the same route and at six-month intervals during those shipments. Although there is no formal routing rule for rail shipments of spent nuclear fuel, the Federal Railroad Administration (FRA) works informally with the utility and carrier to investigate alternative routes by rail. Many of the principles of the highway routing rule are incorporated into the process for rail route selection.

In addition to the informal application of routing standards for spent nuclear fuel shipments by rail, the FRA has regulations in 49 CFR Part 174 which impose rail safety requirements. These rules require a separation of spent nuclear fuel by at least one car from the engine, from an occupied caboose, and from another placarded car in the train. The rules impose a 48-hour limit on forwarding a spent nuclear fuel

shipment after acceptance at an originating point or receipt at any yard or transfer station (weekends and holidays excluded). The FRA rules require documentation aboard the train and reports of any accidents and incidents enroute. The FRA rules also set standards for wheels and brakes, hours of service, track standards related to train speeds, employee training, and qualifications of train crews.

The FRA's 325 inspectors are responsible for complete inspection of all rolling stock, including locomotives; for monitoring carrier's operating rules and training procedures; for monitoring the nation's rail tracks; for monitoring the railroads signal systems; and for inspecting hazardous cargoes. For the initial move of all the spent nuclear fuel shipments from Nebraska and Minnesota to Morris, Illinois, since August 1984, FRA has inspected the entire track from origin to destination, and completely inspected the signal systems, the carriers' operating rules, the equipment to be used, the documentation and the cargo. In addition to the FRA's complete inspection for the initial move, it is FRA policy to conduct a full equipment inspection and documentation check on each spent nuclear fuel shipment. After the initial track and signal inspection, further inspections are conducted on a periodic basis.

In addition to the DOT controls exercised over spent nuclear fuel shipments, NRC conducts a safeguards evaluation of rail routes in much the same way as it does for highway routes.

In addition to the determinations of routing adequacy made by the DOT, the NRC concluded, after issuing its Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes (NUREG-0170) in December 1977, that its regulations were adequate to protect the public against unreasonable risk from the transportation of spent

nuclear fuel. For 1985, the report projected that there would be 1,530 spent nuclear fuel shipments by truck and 652 by rail (Table 1.1). These shipments were evaluated as presenting an accident risk of only .0004 latent cancer fatalities per year (Table 5.9). Based on this evaluation, the risk associated with any individual shipment of spent nuclear fuel transported in accordance with NRC and DOT regulations is small.

In support of the petition's contention that shipping controls may not be adequate for some routes, a commenting State agency conducted a review of the technical literature on cask design, development, and performance and concluded that the safety of existing casks is sufficiently uncertain as to warrant more extensive testing which would address potentially hazardous conditions for each proposed route. An individual commenter noted that casks now in use have not been tested for strength when heated to the temperature at which they travel and then submerged into the cold waters of the Mississippi River.

The Commission notes the long-standing disagreement between it and some persons who question the adequacy of the NRC package standards for transportation of radioactive material and who doubt whether the packages can be adequately evaluated by engineering analysis rather than being physically tested under all conditions to ensure their accident resistance. The NRC employs the package standards of the International Atomic Energy Agency which have been in use throughout most of the world for almost 20 years. While spent nuclear fuel casks have not been subjected to all possible combinations of accident conditions during that time, there has been enough accident and testing experience to confirm the high strength of casks in use today. The difference between the normal operating temperature of a spent nuclear fuel cask and the temperature of a large river such as the Mississippi is not large enough to cause a structural or

containment problem. Furthermore, the large mass of the cask would slow its cooling, thereby reducing any potential for damage.

2. Protection of the Public in Emergencies

The petitioner's second allegation is that no Federal agency requires "adequate safeguards to protect against emergencies," and that "NRC...only gives cursory attention to emergency planning." Petition at 5 and 6.

The Federal plan for providing adequate safeguards to protect against radiological emergencies is described in a Federal Register notice issued by the FEMA on September 12, 1984 (49 FR 35896). The plan describes how 12 Federal agencies that have resources and capabilities to respond to a radiological emergency will work together and will work with State governments and private organizations during an emergency response.

The plan, known as the Federal Radiological Emergency Response Plan (FRERP), describes how the Federal Government will respond to State requests for assistance during a major radiological emergency, how the Department of Energy (DOE) will maintain radiological monitoring and assessment support to the State and local governments, and how the other Federal agencies are prepared to augment the DOE support, if necessary. The FRERP has been tested by the Federal agencies and proven viable. NRC has issued a general statement of Policy on NRC Response to Accidents Occurring During the Transportation of Radioactive Material (49 FR 12335, March 29, 1984).

The scope of the FRERP specifically includes Federal response to transportation accidents involving radioactive materials. One of the FRERP planning assumptions is that State or local governments have primary responsibility for determining and implementing any measures to protect life, property, and the environment in any areas not within the boundaries of a fixed nuclear facility. In a transportation accident, the State or

local government has the responsibility for taking emergency action, while appropriate Federal resources may be used to support State and local government response measures, if requested. Federal agency response plans recognize the primacy of the response roles of state and local governments, operators of the transporting vehicle, and owners of the spent fuel.

A utility commented that when an accident occurs the response to it is, of necessity, a local responsibility. After reviewing the responsibility of the DOT to reduce the probability of transportation emergencies and the responsibility of the DOE to maintain response teams to assist local authorities in the event of a nuclear emergency, the utility referred to a DOT conclusion that "spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals, the containment of which could also be expected to exceed the capacity of local groups to respond (49 FR 46664)."

In commenting on the petition, a second utility agreed that it would appear appropriate for a State, in conjunction with its emergency response capabilities, to examine possible transport routes within its borders and recommend to NRC that these preselected routes be used. The Commission notes that this process is already in use for safeguards purposes and that a number of States have recommended routes within their boundaries. These State recommendations are considered by NRC in its route approval process for spent nuclear fuel shipments.

An individual from the State of Wisconsin, after reviewing the regulatory system now in place, the small risk of radiation injuries from a spent nuclear fuel incident, and the numerous competent groups available to respond to a transportation accident involving radioactive material in

Wisconsin, concluded that the Wisconsin proposal would result in adverse consumer economics without significantly improving public safety.

An item sometimes referred to as necessary for an effective emergency response is prenotification to State and local authorities that a spent fuel shipment is being made. In response to a Congressional requirement, NRC regulations in 10 CFR 71.97 now require prior notification of licensee shipments of spent nuclear fuel to the Governor of each State through or into which the shipment will pass. In commenting on the Wisconsin petition, a State agency noted that, particularly in the area of advance notification of shipment of spent nuclear fuel, the NRC's regulations must be strengthened. A second State expressed its concern with the lack of enforcement and inspection procedures needed to assure that proper prenotification is made by the shipper and that information submitted is accurate. In addition, a city urged the NRC to increase the length of the notice period for spent nuclear fuel advance notifications. The Commission considers its advance notification rule to be reasonable in terms of the length of notification period and considers its inspection and enforcement of this rule to be sufficient to ensure its effectiveness. However, this must be considered a separate issue not covered within the Wisconsin petition, because no proposal to amend the advance notification provisions is included in the petition. Changes to those requirements may be proposed under the "petition for rulemaking" provisions of 10 CFR 2.802 of the NRC regulations.

Another essential ingredient for adequate emergency response capability is trained response personnel at both the State and local levels. The FEMA, in its March 11, 1982 revision of 44 CFR Part 351, "Radiological Emergency Planning and Preparedness," sets out Federal agency roles

and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. FEMA places upon itself the responsibility to develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. The NRC, the Environmental Protection Agency, and the Departments of Health and Human Services, Energy, Transportation, Agriculture, and Commerce all have responsibilities to assist FEMA, in their particular fields of expertise, in the development, implementation, and presentation of training programs for Federal, State, and local radiological emergency preparedness personnel. The DOT has the particular responsibility in the area of transportation emergencies to provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials.

Emergency response training programs which have resulted from these Federal responsibilities are as follows[1]:

a. DOE, through Oak Ridge Associated Universities (ORAU), offers
   - "Medical Planning and Care in Radiation Accidents," a one-week course for physicians, training about 48 participants per year.
   - "Health Physics in Radiation Accidents," a one-week course for health physicists, training about 36 participants per year.

[1]FEMA-REP-5, Guidance for Developing State and Local Radiological Emergency Response Plans and Preparedness for Transportation Accidents, March 1983, Federal Emergency Management Agency.

- "Handling of Radiation Accidents by Emergency Personnel," a 2-1/2 day course for emergency room surgeons and nurses, training about 54 participants per year.

b. DOT offers --

- "Radioactive Materials Transportation Information and Incident Guidance," a self-training manual.
- Emergency Response to Hazardous Materials in Transportation (Self Study Guide), U.S. Department of Transportation, 1982. This is a DOT-offered self-study course on full-spectrum transportation regulations.
- "Handling Radioactive Materials Transportation Emergencies," a training package for first-on-the-scene responders. This is a 6 to 8 hour tape and slide presentation.
- Hazardous Materials: 1980 Emergency Response Guidebook, U.S. Department of Transportation, 1980.
  This document has relevance to full-spectrum hazardous material response. The DOT has distributed this document with the intent of providing a copy for operators of every emergency vehicle in the United States.

c. FEMA Radiological Emergency Preparedness (REP) program offers --

- "Radiological Emergency Planning Seminar," a one-week seminar focusing on nuclear power plant offsite planning requirements.
- "Radiological Accident Assessment Course," a one-week course to train radiological health personnel in offsite dose assessment and projection techniques.
- "Radiological Emergency Response Course," a ten-day course to train State and Federal radiological emergency response team personnel in techniques of responding to a wide range

of radiological accidents. Approximately 400 persons are trained each year.

d. NRC, through ORAU, offers --

- A ten-week program for State health physicists, training about 20 participants per year.

e. Colorado Training Institute offers --

- A three-day seminar and a two-week course on all phases of hazardous materials transportation incident response, including radioactive materials. Originally funded by a grant from DOT, but now an independent State-run program.

On a training related issue, the DOT highway routing regulation requires that drivers of vehicles carrying spent nuclear fuel receive emergency action training within the 2 years preceding that transportation. The training must include the properties and hazards of the spent nuclear fuel and the procedures to be followed in the event of an accident or other emergency. The DOT regulation also requires the driver to have a copy of the mandatory route plan including telephone numbers which will access emergency assistance in each State to be entered. 49 CFR §§ 177.825(c)-(d). The required training for escorts, applicable to all modes of transport, includes the following five subjects: (1) security en route, (2) communications, (3) radiological considerations, (4) response to contingencies, and (5) response to threats.

3. <u>NRC Regulation of the Carrier</u>

The petitioner's third allegation that "the NRC does not regulate the carrier or consider its safety record" fails to recognize that the DOT performs this function. Petition at 6. DOT imposes regulations that relate to both the hazardous nature of the cargo and the safety aspects

of the transporting vehicle. DOT also inspects and enforces against its carrier rules.

Although NRC considers that it has the authority under the Atomic Energy Act to regulate carriers insofar as they transport material regulated by the NRC, it has agreed under a Memorandum of Understanding with DOT dated June 8, 1979 (44 FR 38690) that it will leave the development of carrier safety standards to DOT because of DOT's greater experience and expertise in that role.

On the issue of incomplete regulatory control, one State referred to a report issued in 1984 by the National Research Council entitled "Social and Economic Aspects of Radioactive Waste Disposal-Considerations for Institutional Management." On the issue of transportation of spent nuclear fuel, the panel of experts "found that an underdeveloped regulatory framework currently exists for the transportation of spent fuel and high-level waste. The federal governmental agencies involved defer to each other, with primary responsibility essentially delegated to NRC's reactor licensees." The panel recommends "a careful evaluation of existing federal regulation of highway transport to assure that (a) a sufficiently broad and uniform regulatory regime exists for the safe transport of radioactive wastes, (b) any redundancies and incompleteness in the existing NRC-DOT regulations have been eliminated, and (c) the needs of States to control safety on their highways are met." The State submits that the conclusions and recommendation of the report are warranted, and that adoption of the Wisconsin petition would help the problem. The Commission strongly disagrees that its regulatory framework is underdeveloped. The existing rules were developed over substantial periods of time with full opportunity for public comment. The regulations have met the test of time producing an excellent

safety record over many years. In the absence of any demonstration that the regulations are inadequate, and the National Research Council report has not been specific in that regard, the Commission is not inclined to act on the recommendations of the report.

A nuclear equipment manufacturer commented that the Wisconsin petition is apparently based on the premise that the transport of spent nuclear fuel is not adequately regulated even though it is one of the most heavily regulated transportation activities. The commenter argued that the basic regulatory system for transport of spent nuclear fuel has been demonstrated by experience nationally and internationally to be sufficiently encompassing to ensure protection of public health and safety. The proposed procedures for approval of spent nuclear fuel shipments would cause an enormous use of NRC and utility resources for little, if any, public gain. The Commission agrees that the same package and transportation standards are applied internationally and have proved to be adequate. However the systems (i.e., agencies or combination of agencies) that apply those uniform standards differ from country to country. The NRC is continually monitoring the relationship between its regulations and those of the other agencies with which it shares jurisdiction in the United States.

4. Need for and Propriety of Individual Shipments

In referring to spent nuclear fuel shipments over the last 18 months, the petitioner comments that "no Federal agency has considered the need for the shipments.... or the properity of exposing the public to these risks." Petition at 4. In enlarging on this same concept, the petitioner argues that "the utilities' ratepayers may be exposed to substantial costs, the public in the vicinity of the route may be exposed to substantial

safety hazards, and States and municipalities along the route may be exposed to substantial liability and costs for emergency response without any opportunity to question the propriety of the shipment." Petition at 7. The petitioner requests that an applicant for approval of an individual spent nuclear fuel shipment be required to demonstrate that "the proposed shipment is necessary to meet the requirements of the licensee's operating license or required minimum fuel storage capacity." Petition at 2.

A State agreed with Wisconsin's allegations that there are significant gaps in the regulatory program regarding shipment of spent nuclear fuel. Specifically,

- There should be a Federal policy designed to minimize spent nuclear fuel shipments prior to the operation of a commercial nuclear waste repository; and
- There should be a Federal regulatory system for evaluating the <u>need</u> for spent nuclear fuel shipments prior to the operation of a repository.

A State senator supported that view by noting that spent nuclear fuel shipments which have been and are being made to the Morris Storage Facility will have to be removed from Morris and transported again when the U.S. Government develops an interim storage facility or a disposal facility. He believes this raises the serious question of the necessity of shipments to Morris. An individual agreed by noting that shipments of spent nuclear fuel from Monticello, Minnesota to Morris, Illinois are being made only for economic gain since the storage pool at Monticello has about 4 more years of space left in it at current use rates.

A public interest group asserted that there should be consideration given to the need for the shipments and the safety and environmental risks

associated with various routes, and related that consideration to its belief that the training of fire fighters, law departments, and hospitals is inadequate at this time.

A State summarized its view that it is irrefutable that spent nuclear fuel shipments pose some risk and that the unnecessary and uncoordinated random shipment of those materials must be avoided. The State concluded that even after a comprehensive and reasonably predictable strategy for spent nuclear fuel management has been developed and the impacts of shipments can be analyzed, a review of the need for such shipments must be conducted and used as the basis for granting or denying authorization for the shipments.

On the other hand, a utility noted that local governments have imposed regulations in the past requiring the transporter to demonstrate a need for each shipment. The utility further noted that all such regulations have been struck down as being in violation of the Commerce Clause of the U.S. Constitution. As support for this proposition, the utility cited Kassel v. Consolidated Freightways Corporation of Delaware, 450 U.S. 662 (1981).

A law firm representing multiple utilities commented that the Wisconsin petition proceeds from the two false assumptions that (1) spent nuclear fuel shipments are so dangerous or environmentally harmful that they should only be permitted in the event of dire need, and (2) NRC possesses the legal authority to determine the "need" for proposed shipments. The commenter cited the Nuclear Waste Policy Act of 1982 and its requirement that the Department of Energy provide interim storage capacity (prior to the establishment of a permanent high-level waste repository) for civilian nuclear power reactors that cannot reasonably provide

adequate storage on site. This capacity is to be made available only to a person who is "diligently pursuing licensed alternatives to the use of Federal storage capacity" including transshipment to another civilian nuclear power reactor owned by such person. The commenter believes that Congress thus expressly acknowledged the possible need for electric utilities to transship spent nuclear fuel. The commenter also cited Public Law 96-295, which requires that NRC provide for prenotification of spent nuclear fuel shipments to State Governors, as evidence that Congress specifically contemplated shipments of spent nuclear fuel prior to the operation of a repository. The commenter then pointed to the NRC and DOT regulations under which spent nuclear fuel shipments are authorized, regulations the adequacy of which has been reaffirmed on a number of occasions, and concluded that "any additional specific determinations by NRC as to the 'need' to transport would needlessly and unlawfully circumscribe the managerial discretion of the operators of licensed nuclear power plants."

Finally, a State agency noted that the issue of whether spent nuclear fuel should be transported is not an appropriate subject for resolution through the rulemaking process, but should be resolved only by Federal legislative action.

The NRC has analyzed the risks associated with the transportation of spent nuclear fuel, and found them to be small. The Commission acknowledges enactment of several laws (e.g., The Atomic Energy Act of 1954, as amended, The Nuclear Waste Policy Act of 1982, and The Hazardous Materials Transportation Act) which make it abundantly clear that some spent nuclear fuel shipments are expected and accepted in the public interest, but this cannot be taken as a statement of national policy that all shipments of spent nuclear fuel have been authorized by Congress.

The NRC's recent rulemaking to establish 10 CFR Part 53, "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity," published in the Federal Register on February 11, 1985 (50 FR 5548), raised the issue whether the Commission should give preference to onsite storage alternatives in determining the need for Federal interim storage for a licensee. Consideration was given to indications in the legislative history of the Nuclear Waste Policy Act of 1982 (NWPA) to the effect that onsite storage of spent nuclear fuel should be encouraged and that transportation of spent nuclear fuel should be minimized. The Commission took the position in that rulemaking action, and affirms it here, that it has no authority under Subtitle B of the NWPA to establish priorities for the pursuit of spent nuclear fuel storage alternatives. If the Commission finds, pursuant to 10 CFR Part 53, that one or more alternatives to Federal interim storage is feasible, the utility is not eligible to participate in the Federal interim storage program. The choice of which alternative to pursue will be decided elsewhere.

As to the petitioner's concern over substantial costs to the utilities' ratepayers from unnecessary shipments of spent nuclear fuel, the economic decisions made by utilities in transporting spent nuclear fuel are beyond the purview of the NRC's regulatory authority as long as the utility meets NRC regulatory requirements with respect to health, safety, common defense, and security. See, Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission, 461 U.S. 190, 221-22 (1983).

In addition to the Commission having found that the risks of spent nuclear fuel transportation are low, it also explored the consequences of serious incidents which might cause the spent nuclear fuel casks to fail. One recent series of tests included the destructive testing of spent nuclear fuel in simulated fuel casks occurring from presumed acts of sabotage.

The preponderance of available evidence, including the recent testing to analyze the effect of explosives, showed that accidental releases from spent nuclear fuel casks would be neither severe nor far-reaching.* Based on this preponderance of evidence, the Commission finds no basis for further restrictions on the shipment of spent nuclear fuel or for an examination of the need for individual shipments.

The Commission does have a study underway on this subject, however, to assess the accident resistance of spent nuclear fuel shipping casks when subjected to the stresses associated with historically-based real-world accidents. The study will evaluate the ability of spent fuel transportation containers designed to meet the performance criteria in current NRC regulation (10 CFR Part 71) to safely retain its radioactive contents, maintain its shielding, and prevent nuclear criticality when subjected to stresses associated with severe road or rail accidents. It will also assess the probability and potential consequence of any accidents in which stresses exceed values associated with current regulations. The study is nearly complete and results are expected to be published in late 1986 following an independent peer review. This study, as well as other initiatives, is part of the continuing Commission process to assess and maintain its transportation regulations adequate in light of changing transportation patterns and technologies.

With risks low and potential consequences even from an improbable, severe accident less than catastrophic, additional controls are only justified if the cost of those controls does not exceed their benefits. In

*NUREG-0170 "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," December 1977. NUREG/CR-2472, "Final Report on Shipping Cask Sabotage Source Term Investigation," October 1982.

the case of the additional controls sought by the petitioner, the technical benefits would be measured in terms of the value of normal and accidental exposures avoided. While the costs of the new approval procedure proposed in the petition have not been quantified, it is the Commission's judgment that, because of the small technical benefits available under any foreseeable circumstances, a favorable cost/benefit balance could not be obtained.

5. Opportunity for Meaningful Public Participation

The petitioner's final allegation in support of the proposal is that "the public has no opportunity for meaningful input into the decision to transport waste, as this decision is wholly within the discretion of the licensee." Petition at 7. The petitioner requests that the "NRC exercise its regulatory authority to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum...." Id at 1.

A State commenter reported that two public discussions held in advance of spent nuclear fuel shipments from the State had some constructive results. The utility involved was able to demonstrate that it had reviewed alternate means of addressing its storage problems, and State agencies, the utility, and the carrier were spurred by public concern to take safety precautions beyond the minimum required by Federal regulations. Based on this experience, the State suggested three reasons for a positive response to the Wisconsin petition:

- Open discussion of the issues may result in a greater range of choices, both formal and informal;
- Fears that public participation would somehow get out of hand and undermine rational, technically-sound decision making are

probably not realistic. Reasonable resolution leaves everyone better off; and

- If the NRC itself provides a public forum, resort to State and local government as a source of information and discussion is less likely. Legally futile attempts to ban spent nuclear fuel transportation by local ordinance can only generate local resentment and undermine Federal authority.

The Commission, together with DOT, has also attempted to establish a dialogue with affected persons on the issue of spent nuclear fuel transportation. At a DOT/NRC hosted seminar in Chicago on July 31-August 2, 1985, those agencies met with representatives of 49 States, local governments, and Indian Tribes to discuss the problems and potential solutions associated with spent nuclear fuel transportation. A total of 275 people participated.

In addition, an NRC contractual study has included numerous interviews with government officials and members of the public regarding their concerns over shipments of spent nuclear fuel from the West Valley, New York, former reprocessing plant now being decommissioned. The focus of the study has been to obtain information documenting the concerns and actions of affected institutions in previous spent fuel shipment campaigns. The contractual study is not yet complete.

Most of the public commenters who supported the Wisconsin petition also supported the formal hearing process which was part of the petition and on which the approval of the spent nuclear fuel shipment in question would in part be based. For example, a State observed that members of the affected public have not been given an opportunity through the route-approval process to express their concerns about their own personal safety and the protection of the environment in which they live. The Wisconsin

petition gives the public an appropriate opportunity to provide input into the decisionmaking process. A public interest group complained that "it has been impossible to provide input into the decisionmaking process for nuclear waste shipments," and believes that "if there is no public input the health and safety of the public will not be insured."

Some persons supporting and some persons opposing the petition registered comments against the formal hearings proposed. A utility commented that the rule as proposed is silent on whether the requirements would be repeatedly imposed for a specific shipping route even though approval was granted for a prior shipment, and could be construed so as to benefit individuals interested in making frivolous repeated requests for hearings for already established shipping routes. A State commented that the basic reason for the rulemaking petition is to allow more public input to the decisions regarding transportation of spent nuclear fuel. While the State encouraged public participation in all aspects of interstate transportation, it believed the Wisconsin proposal would result in undue hardship on the shipper and carrier. The State believed that NRC and DOT provisions for public input have been adequate for route selection, and in fact the State had designated certain routes as preferred routes for spent nuclear fuel shipments. The State's recent accident experience has been good.

There was some division of sentiment among State and local officials on the times when public hearings would be most useful. Although it was not clear from the petition whether a series of shipments could be approved as a result of a single hearing or whether an individual shipment would be subject to the entire approval process by itself, some commenters clearly preferred approval of a series of shipments. For example, a commenting State favored a generic, rather than specific, examination of spent fuel

shipments to establish generic criteria for designating routes and alternate routes, for establishing the need to ship, and for calculating risks, but favored avoiding the possibility of a hearing each time spent nuclear fuel is shipped. A city endorsed Wisconsin's request for individual approval of spent nuclear fuel shipments, for public comments on each request, and for environmental impact statements if required under Federal law, rules and requirements, but would give the NRC discretion on whether to conduct a hearing when requested by a commenting person.

Another State supported the Wisconsin contention that the current NRC transportation rules be thoroughly reviewed by the Commission, including ample opportunity for State and public comment. Procedurally, however, the State supported a thorough public review only prior to any major campaign to ship radioactive wastes between two points, including an opportunity for affected States to participate in routing decisions. It suggested that an understanding should also be reached with all affected States of the roles of all parties in inspection of shipments, emergency response, prior notification, and liability.

A State supporting the Wisconsin petition suggested the following revisions to the Wisconsin proposal:

(1) Allow for an application and approval/denial for a series of shipments from one point of origin to one destination; and

(2) Clarify whether an Environmental Impact Statement or an Environmental analysis will be required.

Finally, some commenters seemed to express more of a need for an exchange of information than for a formal hearing where a shipment approval decision is involved. A public interest group complained that the public does not have information as to the safety of the casks being used, the necessity of the shipments, the proper routes to take, or other life

protection issues. The commenter did not believe that shipping spent nuclear fuel from one temporary location to another is a responsible policy, and urged that shipments be stopped until a more responsible policy can be put into effect. One individual supported the petition for its provisions allowing public input, believing that any economic activity affecting the economic and physical health of the public should be subject to effective public input.

The Commission believes it has been very open to public participation in the processes which established the present rules for transporting spent nuclear fuel. This includes public rulemaking proceedings for establishment of packaging standards in 10 CFR Part 71 begun on December 21, 1965 (30 FR 15748); for the general-license, package-approval system in 10 CFR Part 71 begun on November 20, 1971 (36 FR 22134); for the establishment of standardized impacts associated with the transportation of radioactive material, including spent nuclear fuel, to and from nuclear power plants begun on November 1, 1973 (38 FR 30203); and the reevaluation of NRC transportation regulations begun on June 2, 1975 (40 FR 23768). In each of these cases, announcements were issued and public comments were solicited.

As with the radioactive material transportation regulations promulgated by NRC, those adopted by the DOT were also considered through public rulemaking proceedings. The DOT routing rule is an example where there were multiple opportunities for public participation. An Advance Notice of Proposed Rulemaking was issued on August 17, 1978 (43 FR 36492) soliciting public comments. A Notice of Proposed Rulemaking followed on January 31, 1980 (45 FR 7140) that was followed by seven public hearings held in Philadelphia, Atlanta, Chicago, Denver, Seattle, Boston, and New York, plus three additional public meetings in Akron, Ohio; Eugene, Oregon; and Union

City, California. DOT received and reviewed over 1,000 public comments and reviewed over 1,600 pages of transcripts from the public meetings. This represents an extraordinary level of public participation.

V. CONSIDERATION OF COMMENT ISSUES

The public comments raised a number of issues not included in the Wisconsin petition, but which are related to the petition in various ways.

1. Disclosure of Safeguards Information

A utility suggested that the requirement for an applicant to demonstrate that he or she has fulfilled the 10 CFR 73.37 requirements for physical protection of spent nuclear fuel in transport is redundant since the regulation already imposes an obligation to comply with its provisions. The utility further suggested that if a licensee were required to make available for public inspection detailed information relating to security of the shipments, the purposes of § 73.37 would be defeated. A State agency thought that adoption of the Wisconsin petition would compromise the security of spent nuclear fuel shipments by making known during the public hearing process the actual shipment dates and times. An individual commented that announcement of proposed shipments in the Federal Register would breach some needed security and thereby increase the risk of sabotage or theft of the shipment.

The Commission does not agree with the utility's comment that there is no difference between having a requirement for a physical protection program in 10 CFR 73.37 and having the NRC staff review that program to assure that it satisfies those same requirements. As with individuals working in any speciality, the NRC staff develops expertise from reviewing and discussing a large number of physical protection programs which the

staff can then apply to its review of other programs. In the Commission's judgment, this process results in greater assurance that the physical protection requirements of 10 CFR 73.37 are being adequately applied. In fact, for some time an NRC staff review of a licensee's physical protection program for transportation of spent nuclear fuel has been done when the licensee applies for its route approval under § 73.37(b)(7).

The Commission, however, does agree with the commenters that public hearings in which details of a particular shipment and the security arrangements regarding the shipment are discussed might result in increasing the risk of its sabotage or theft.

2. Extending Scope of Wisconsin Petition

A State recommended that the concept proposed in the Wisconsin petition be extended to "other highly radioactive material that the Commission... determines by rule requires permanent isolation" under the provisions of the Nuclear Waste Policy Act (NWPA). The same commenter urged that the same rules also apply to spent nuclear fuel and high-level waste transportation activities undertaken by DOE. A second State also endorsed the amendments to 10 CFR Part 71 proposed by PRM 71-10, and was particularly concerned that the amendments apply to DOE shipments of spent nuclear fuel pursuant to the NWPA. The State interpreted 10 CFR Part 71 requirements as applying to the DOE shipments.

A public interest group supported the Wisconsin petition but asked that protection of the environment be added to the proposed consideration of minimizing radiological exposures. The group also requested that the Commission, on receipt of a request for hearing while considering an individual licensing case, be required to hold a hearing within 60 days in the State from which the request was received.

In general, DOE activities - including spent nuclear fuel shipments - are exempt from NRC regulation as a matter of law. (For the principal exception, see Section 202 of the Energy Reorganization Act of 1974, as amended, 42 USC 5842.) It should be noted, however, that DOE is required by Section 137 of the NWPA, 42 USC 10157, to utilize by contract private industry to the fullest extent possible in each aspect of transportation of spent nuclear fuel under that Act. As a result, the rules pertaining to licensed shipments may apply.

It is the Commission's view that no additional regulatory review of spent nuclear fuel shipments is necessary or desirable. The same view would apply to other types of radioactive material with comparable hazards.

3. Miscellaneous Support For and Opposition to the Petition

Many of the commenters were forceful in their support for or opposition to the petition without providing much new information which would assist the Commission in deciding the issue. A sampling of those comments follows:

a. Support For the Petition

- A public interest group supported the Wisconsin petition by asking for a public rulemaking proceeding to examine the issues raised by Wisconsin, and for a hearing to be held in Wisconsin. The reasons for concern are the following:
  1. The lack of consideration of the need for spent nuclear fuel shipments;
  2. The lack of examination of alternatives to the shipment;
  3. The lack of physical testing of casks;
  4. The lack of demonstrated emergency response capability in case of a radiation accident; and
  5. The lack of a clear evaluation of alternative routes.

- Another public interest group supported the Wisconsin petition because of its concern that there is no Federal agency considering the safety of the public or environmental risks involved in radioactive waste shipments.
- A State Representative believed that "despite the extreme hazard of these radioactive materials the safety of these shipments has not been adequately assured." He cited the failure to determine the need for the shipments, safety and environmental risks associated with specific routes, and lack of adequate emergency response capability as the reasons for inadequate safety. He concluded by stating that all citizens subject to the hazards of these highly radioactive shipments have the right to be assured that all possible steps are being taken to assure their safety.
- One individual supported the Wisconsin petition based on his belief that no adverse or ill effects would be realized by power companies or shippers of spent nuclear fuel.

b. Opposition To The Petition

- An industry commenter made the point that the petitioner has not identified a need for adoption of the proposed rule, and the petition contains no new data or information which would point out inadequacies in the current regulatory basis. The commenter stated his belief that the current transport regulations of the Commission and the corresponding regulations of the DOT provide significantly more than adequate assurances of the public health and safety.

- A utility, in addition to finding the Wisconsin proposal inappropriate and unnecessary, found the language of the proposal so vague in places that one could not demonstrate compliance. The utility also believed that spent nuclear fuel transportation has relatively benign credible accident consequences compared to many chemical shipments which are not subject to such scrutiny.
- A utility referred to a report by Drs. Courtney and Lambremont of Louisiana State University on a review of 190 scientific and technical papers examining radioactive material transportation over an 18-year period. The reviewers concluded that "the risk to the general public from the transportation of radioactive materials is extremely low. The extensive amount of work which supports this conclusion reflects a remarkable international consensus."
- A utility believed the Wisconsin proposal unnecessary given (1) the emphasis on cask design safety; (2) the security provisions of Part 73; (3) the spent nuclear fuel considerations in reactor licensing hearings; and (4) the regulations of the DOT. The utility argued that there has been no showing that an additional evaluation would provide any increased public health and safety protection.
- A representative of an Indian Tribe noted that the Wisconsin proposal omits any reference to a Tribal government's interest in applications for approval of spent nuclear fuel shipments and is thus inconsistent with policies under the NWPA which generally encourage Tribal consent and consultation in the decision-making process.

- A utility, after considering the NRC regulatory framework, safeguards/safety studies, and the safeguards/safety record, recommended that current requirements be reduced.

VI. NRC CONCLUSION

The petition was examined in the context of the Memorandum of Understanding (MOU) between NRC and DOT dated June 8, 1979 (published July 2, 1979; 44 FR 38690), by which transportation regulatory functions are divided between the two agencies in the interest of completeness and avoidance of duplication of effort. Where the MOU calls for the DOT to lead in some particular area, such as in the regulation of carriers of radioactive material and the routes over which they travel, NRC does not consider its regulations or its regulatory programs to be deficient because they do not duplicate that control. The Commission concludes that its existing regulation of the transportation of spent nuclear fuel, when viewed in the context of the combined programs of NRC, DOT, DOE, FEMA and the States, is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public. The allegations of the petition are therefore not accepted by the Commission as adequate justification for the changes requested in the petition. The Commission also concludes that the procedures suggested in the petiton would not significantly serve to improve the protection of the public against unreasonable risk from the transportation of radioactive materials.

For the above reasons, the NRC has denied this petition.

Dated at Washington, DC, this _____ day of _____, 1986.

For the Nuclear Regulatory Commission.

_____
Samuel J. Chilk,
Secretary of the Commission.

ENCLOSURE C

ENCLOSURE C

DRAFT CONGRESSIONAL LETTER

Dear Mr. Chairman:

The NRC has sent to the Office of the Federal Register for publication the enclosed denial of a petition for rulemaking filed by the State of Wisconsin (PRM-71-10). The petitioner had requested that the NRC expand the scope of its regulations pertaining to spent nuclear fuel transportation "to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to approval of the shipment and route."

The NRC concluded that the new procedure requested in the petition was not justified by the arguments presented in the petition when considered together with the views and arguments of the other persons who commented on the petition. The Commission believes that NRC's existing regulation of the transportation of spent nuclear fuel, when viewed in the context of the combined programs of the NRC, DOT, DOE, FEMA and the States is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public.

Sincerely,

Robert B. Minogue, Director
Office of Nuclear Regulatory Research

Enclosure:
Notice of Denial

ENCLOSURE D

ENCLOSURE D

DRAFT PUBLIC ANNOUNCEMENT

NRC DENIES PETITION FOR ADDITIONAL
REQUIREMENTS GOVERNING SPENT NUCLEAR FUEL SHIPMENTS

The Nuclear Regulatory Commission has denied a petition from the State of Wisconsin requesting the agency to revise its regulations governing the transportation of spent nuclear fuel.

In the petition, Wisconsin asked the Commission to expand its requirements to provide for an assessment of the safety and need for individual spent nuclear fuel shipments and to provide an opportunity for public participation in the approval process.

At the present time, the NRC approves the design of casks used to transport spent nuclear fuel and permits the use, under a general license, of an approved design by any licensee registering to use it. The Commission also requires that a cask fabricator have an approved quality assurance program which assures that cask fabrication will be according to the approved design. The Commission inspects that fabrication for further assurance. The agency also has requirements in its regulations to protect shipments of spent nuclear fuel from theft and/or sabotage.

In addition, the Departments of Transportation and Energy, the Federal Management Agency and the individual States have programs applicable to shipments of spent nuclear fuel.

After considering the issues raised in the petition in the light of these ongoing programs and the public comments received on the petition, the Commission has concluded: (1) that the existing regulatory framework governing spent nuclear fuel shipments provides adequate assurance that the public and the environment are protected from unreasonable risks; and (2) that the petition does not contain adequate justification for the changes proposed.

ENCLOSURE E

ENCLOSURE E

99TH CONGRESS
1ST SESSION

H. R. 3932

To provide for State regulation of the transportation of high level radioactive waste.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 12, 1985

Mr. MOODY (for himself and Mr. OBEY) introduced the following bill; which was referred jointly to the Committees on Interior and Insular Affairs, Energy and Commerce, and Public Works and Transportation

---

A BILL

To provide for State regulation of the transportation of high level radioactive waste.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 The Atomic Energy Act of 1954 is amended by inserting at
4 the end thereof the following:

5 "CHAPTER 21. NUCLEAR WASTE
6 TRANSPORTATION

7 "SEC. 311. DEFINITIONS.—For purposes of this
8 chapter—

9 "(1) the terms—

10 "(A) 'high level radioactive waste',

1 "(B) 'State',

2 "(C) 'repository',

3 "(D) 'spent nuclear fuel',

4 "(E) 'Indian tribe', and

5 "(F) 'test and evaluation facility',

6 have the same meaning given such terms in section 2

7 of the Nuclear Waste Policy Act of 1982 (42 U.S.C.

8 10101);

9 "(2) the term 'corridor' means the area or route tra-

10 versed by a particular mode of transportation; and

11 "(3) the term 'person' includes a governmental entity.

12 "SEC. 312. RESTRICTIONS ON TRANSPORTATION OF

13 NUCLEAR WASTE.—

14 "a. No person may transport or be authorized by any

15 Federal agency to transport any high level radioactive waste

16 or spent nuclear fuel—

17 "(1) from the site at which such waste or fuel is

18 located on the date of the enactment of this chapter; or

19 "(2) from the site at which it is generated after

20 such date,

21 to any facility site, repository, away from the reactor storage

22 site, interim storage facility, monitored retrievable storage fa-

23 cility, or test and evaluation facility without receiving a li-

24 cense to transport such waste from the Commission as pro-

25 vided in this chapter.

Enclosure E

1 "b. A license to transport waste or fuel required by sub-
2 section a. may be granted by the Commission upon applica-
3 tion in accordance with this section. Each application shall
4 include—
5 "(1) an emergency response and mitigation plan
6 as provided in subsection c.;
7 "(2) a hazard/risk assessment of the corridor as-
8 sessing the physical impacts that affect the risk of
9 transporting in that corridor;
10 "(3) an environmental impact report, if required
11 by the Commission;
12 "(4) an analysis of alternate corridors, including a
13 comparison of risks and hazards;
14 "(5) evidence that a notice of application has been
15 sent to corridor States and affected Indian tribes, and
16 that such States and Indian tribes have been consulted
17 on corridor selection;
18 "(6) sufficient information to determine the need
19 for the shipment of the waste or fuel; and
20 "(7) proof of financial responsibility.
21 "c. Each application for a license to transport high level
22 radioactive waste or spent nuclear fuel shall include an emer-
23 gency response and mitigation plan outlining procedures to
24 be taken in the event of a release or potential release of
25 radioactive waste. Such procedures shall include—

Enclosure E

1 "(1) emergency tactics for investigation and
2 monitoring;
3 "(2) emergency medical and hospital procedures;
4 "(3) containment and decontamination procedures
5 for an accidental release of radioactive waste to the en-
6 vironment;
7 "(4) decontamination procedures for public and
8 emergency response personnel;
9 "(5) cleanup procedures;
10 "(6) coordinated response procedures with affected
11 States, tribal, and local entities; and
12 "(7) resource identification and accessibility.
13 "d. (1) Prior to issuing a license to transport high level
14 radioactive waste or spent nuclear fuel, the Commission shall
15 prepare an environmental assessment which shall include a
16 detailed statement of the basis for the Commission's decision
17 and the probable impacts. Such an environmental assessment
18 shall include, at a minimum—
19 "(A) a comparison of the relative hazards and
20 risks of alternative corridors and modes;
21 "(B) an evaluation of the emergency preparedness
22 of States, local communities, and affected Indian tribes
23 along the selected corridor;

Enclosure E

1 "(C) a description of the environmental features
2 both human and natural, along with the selected
3 corridor;
4 "(D) a description of the condition of the physical
5 features along the corridor which might hinder recov-
6 ery, containment and cleanup of an accident involved
7 in the transportation of waste; and
8 "(E) an evaluation of the environmental and
9 human health effects of a release of high level radioac-
10 tive waste during transport.
11 "(2) To the extent necessary to protect public health
12 and safety and the environment, the Commission shall impose
13 reasonable and prudent restrictions on the shipper which will
14 as a result of the environmental assessment, either minimize
15 the risk of an incident or enhance the potential for contain-
16 ment and cleanup of an incident.
17 "e. (1) The Commission may issue a license in conform-
18 ance with this section, if it determines that the shipment or
19 series of shipments meet all applicable Federal and State
20 requirements.
21 "(2) The Commission may issue a license for a single
22 shipment or for a series of shipments if—
23 "(A) all shipments in the series contain the
24 same type of waste;

1 "(B) all shipments in the series use the same
2 shipping containers, transportation vehicles and
3 corridor; and
4 "(C) all shipments in the series occur within
5 two years after issuance of the license.
6 "SEC. 313. EMERGENCY RESPONSE CAPABILITIES.—
7 The Department of Energy, the Commission, the Depart-
8 ment of Transportation, and the Federal Emergency Man-
9 agement Agency shall, in consultation with the States and
10 affected Indian tribes, determine the emergency response ca-
11 pabilities of corridor States and affected Indian tribes with
12 respect to the implementation of an emergency response and
13 implementation plan prepared pursuant to section 312 c.
14 These Federal agencies, States, Indian tribes, and affected
15 communities shall develop and exercise the emergency re-
16 sponse and mitigation plan within twelve months of the date
17 a license is granted pursuant to this chapter. No shipments
18 may be made unless such plans are developed and periodical-
19 ly exercised.
20 "SEC. 314. AFFECT OF CHAPTER ON INDIAN
21 TRIBES.—No Federal regulation shall preempt States and
22 Indian tribes from imposing regulations for—
23 "(1) implementation of inspection, surveillance,
24 and enforcement permits;

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1 "(2) establishing fees designed to pay the cost of
2 the State nuclear safety transportation programs;
3 "(3) accident and incident reporting;
4 "(4) advance notification of shipments;
5 "(5) designation of alternate corridors;
6 "(6) identification of safe havens;
7 "(7) driver certification requirements; and
8 "(8) monitoring, containment, cleanup, and decon-
9 tamination procedures.
10 "SEC. 315. EXEMPTION FROM TRANSPORTATION RE-
11 STRICTIONS.—The restrictions established in section 312
12 shall not apply to high level radioactive waste or spent nucle-
13 ar fuel that is to be transported if the Commission certifies
14 that there are compelling reasons of public health and safety
15 or national security which necessitate the immediate trans-
16 portation of the waste to another site or facility.".

O

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

ENCLOSURE E

February 27, 1986

Staff Analysis

MEMORANDUM FOR: Charles E. Mullins
Office of the General Counsel

FROM: John G. Davis, Director
Office of Nuclear Material Safety and Safeguards

SUBJECT: HR 3932: AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954

The Office of Nuclear Material Safety and Safeguards staff, in consultation with the Offices of Nuclear Regulatory Research, Inspection and Enforcement, State Programs, and Executive Legal Director, has reviewed the subject legislation. We offer the following assessment, beginning with general comments on the Bill's purpose and approach.

The stated purpose of HR 3932 is "to provide for State regulation of the transportation of high level radioactive waste." It is the staff's view that the existing Federal system has provided uniformity in regulating safety in the transport of radioactive materials, and that the Federal regulatory system has provided adequate protection of the public health and safety. While the States have important roles to play in radioactive material transport, the staff believes that primary responsibility for regulation of safety in transport should remain at the Federal level. The staff recognizes that States are concerned about the transportation of high level radioactive waste and spent nuclear fuel, and that States desire greater participation in the transport regulation process. It is the staff's view, however, that amending the Atomic Energy Act, upon which NRC's safety regulations are based, is not an appropriate or effective approach for addressing State roles in the transport of radioactive materials.

The subject legislation was introduced by Representatives Moody and Obey of Wisconsin on December 12, 1985. The key requirements of the Bill may be summarized as follows: prohibit shipments of high-level waste and spent nuclear fuel not approved by NRC; and require NRC to establish a new process to evaluate, review the need for, and approve shipments. Requirements similar to these are included in companion legislation (S-1927) introduced by Senator Proxmire (Wisconsin) on the same day HR 3932 was introduced. Similar requirements for shipments of spent fuel are also embodied in a petition for rulemaking submitted to NRC by the State of Wisconsin in December 1984. The Office of Nuclear Regulatory Research has been preparing the Commission's response to the Wisconsin petition under NRC's administrative procedures. This response has included publication of the petition in the Federal Register for public comment, analysis of the petitioner's allegations, and preparation of a draft Commission paper responding to the petition and the public comments. Essentially, the draft Commission paper concludes that the transportation of spent fuel is adequately regulated by DOT, NRC, DOE, FEMA, and the States; the risk in such transport is so small that a determination for need is not required for each shipment; and that the public has had adequate opportunity for input in the

existing transportation safety program. The NRC responses to the petition apply to HR 3932 to the extent the requirements of HR 3932 are analogous to those contained in the petition for rulemaking. The draft Commission paper and Federal Register notice prepared in conjunction with this petition (copy enclosed) should be referred to for further elaboration of NRC's position on the requirements proposed by the petition.

Staff has additional comments on certain specific provisions of the Bill.

- Section 312 could be interpreted to require NRC licensing of all DOE waste and spent fuel transportation, including shipments under the Nuclear Waste Policy Act (NWPA). This would be a significant departure from current practice in which DOE ships most of its waste under its own authority. Furthermore, Section 189 of the Atomic Energy Act might require the Commission to hold hearings on these new licensing actions.

- The Bill would require NRC to analyze alternate transportation corridors. Such an analysis has already been performed generically by DOT in its routing rule for Highway Route Controlled Quantities of Radioactive Material, DOT Docket HM-164. This rulemaking has been upheld in the courts.

- The Bill would require NRC to prepare an environmental assessment for each shipment license. NRC has already published its generic Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes (1977). Based on the information contained in this report and the public comments received, the Commission has found that the risks from transporting radioactive material, including spent fuel, are small. The Commission has concluded that current transportation requirements adequately protect the public health and safety, and that no changes in these requirements are needed.

- The Bill calls for the Commission to determine that shipments meet all applicable federal and state requirements. It is not clear how the Commission could make such a determination when the Bill would permit States (see Section 314) to impose possibly conflicting regulations for inspections, accident and incident reporting designation of alternate corridors, etc. Further, it is not clear how the Commission could make a determination that shipments meet all applicable Federal requirements when the Bill would permit activities that conflict with Federal preemption and other provisions of the Hazardous Materials Transportation Act and DOT's implementing regulations, and with NRC's rules concerning advance notification.

- It is not clear whether the requirement for a license and all the associated specifications are directed at the shipper or the carrier, as the specifications do not appear to be directed solely at either. NRC does not now regulate or license carriers except for safeguards purposes.

- A determination of the emergency response capability of corridor states, Indian Tribes, and local communities is required both in Section 312d(1) and in Section 313 as a prerequisite for license approval. It is questionable whether any of the Federal agencies have the authority to require States, Indian Tribes, or affected communities to develop and exercise an emergency response and mitigation plan within 12 months of a license being issued. State or Tribal refusal to participate in the exercise requirement could constitute a veto of the shipment licensing process.

- The licensing process and the preparation of separate environmental assessments for shipments called for in this legislation would constitute substantial demands on NRC manpower and program support resources.

The staff concludes this legislation, if enacted, would not significantly contribute to the health and safety of the public but would consume substantial resources at the Federal level and at NRC in particular, and would impose requirements which in many instances are duplicative or contradict existing safety rules and practices. The staff, therefore, strongly recommends that the Commission not support passage of HR 3932.

John G. Davis, Director
Office of Nuclear Material
Safety and Safeguards

Enclosure: As stated

ENCLOSURE F

ENCLOSURE F - Petition

PRM-[redacted]
Rcd. 12/18/84

The State of Wisconsin
Department of Justice

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Carl A. Sinderbrand
Assistant Attorney General
(608) 266-3636

123 West Washington Avenue
Mailing Address: P.O. Box 7857
Madison, Wisconsin 53707

Bronson C. La Follette
Attorney General

Ed Garvey
Deputy Attorney General

December 13, 1984

Mr. Samuel Chilk, Secretary
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Petition for Rulemaking by the State of Wisconsin

Dear Mr. Chilk:

Enclosed please find a Petition for Rulemaking, filed on behalf of the State of Wisconsin. The Petition requests that the United States Nuclear Regulatory Commission (NRC) establish a regulatory process for the evaluation and approval of proposed shipments of irradiated reactor fuel.

As indicated in the Petition, there is presently no forum available to the public to consider the need, safety or propriety of proposed spent fuel shipments. Moreover, the decision whether to transport these wastes is currently left to the discretion of the licensee. The proposed rule would: 1) prohibit unapproved shipments; 2) require the NRC to evaluate and pass upon the propriety of the shipment; and 3) provide an opportunity for public input into that decision.

We ask that you docket this Petition and publish the proposed rule in the Federal Register at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

Carl A. Sinderbrand

Carl A. Sinderbrand
Assistant Attorney General

CAS:jak

cc: Nunzio Palladino, Chairman
Anthony S. Earl, Governor

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSIONERS

In the Matter of the
Petition of the State
of Wisconsin for the
Adoption of a Rule
Regulating the Transportation
of Irradiated Reactor Fuel

DOCKET NO. _____

PETITION FOR RULEMAKING

The State of Wisconsin, petitioner, hereby petitions the United States Nuclear Regulatory Commission (NRC), pursuant to 5 U.S.C. sec. 553 and 10 C.F.R. sec. 2.802, to exercise its rulemaking authority and adopt a rule expanding the scope of its regulations governing the transportation of irradiated reactor fuel. Specifically, the petitioner requests that the NRC exercise its regulatory authority to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to approval of the shipment and route.

I. Text of Proposed Rule.

Advance approval for transportation of irradiated reactor fuel.

(a) No licensee may transport, or deliver to a carrier for transport, in a single shipment, a quantity of irradiated reactor

Enclosure F

fuel in excess of 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding, unless that licensee first obtains the approval of the Commission

(b) An application for approval of a shipment of irradiated reactor fuel shall be made in writing at least 120 days prior to the proposed shipment, and shall demonstrate that:

(1) The applicant has fulfilled the requirements of § 73.37;

(2) The proposed shipment is necessary to meet the requirements of the licensee's operating license or required minimum fuel storage capacity;

(3) The proposed route complies with all applicable DOT safety and routing regulations;

(4) There are no route-specific conditions or hazards which create unique risks of accidents, sabotage or radiological exposure; and

(5) The applicant has evaluated alternatives to the proposed shipment and alternative routes and has demonstrated that the proposed shipment is the alternative for handling the irradiated reactor fuel which provides the least risk of radiological exposure to the public.

(6) The proposed shipping cask is shown to be capable of withstanding all reasonably foreseeable incidents along the proposed route which could interupt the shipment.

(c)(1) Upon rceipt of the application, the Commission shall provide notice of receipt of the application in the federal register and to each state along the proposed route.

(2) Any interested person, including any state or municipality along the proposed route, may submit written comments and request a hearing concerning the applicant's compliance with subsec. (b)(1), within 30 days after publication of the application in the federal register.

(3) The Commission shall issue a decision on the application within 60 days after completion of any hearing held under subsec. (b)(2).

(d) The Commission's action under this section is an action for which an environmental impact statement may be necessary, in accordance with 10 C.F.R. § 51.5(b).

II. Grounds and Interst.

Petitioner is a state which has experienced the transportation of irradiated reactor fuel both to and from the state and through its borders, over both highways and rail. The State of Wisconsin has an interest in protecting its citizens from unnecessary risks associated with the transportation of hazardous substances, including spent nuclear fuel. The petitioner also has an interest, as the entity which is pragmatically responsible for immediate emergency response, in ensuring that transporters of spent fuel have adequately prepared for potential emergencies.

III. Statement in Support of Petition.

The transportation of irradiated reactor fuel is an activity of significantly increasing frequency. Throughout the United States, nuclear reactor facilities are reaching maximum capacity in their spent fuel storage pools. While research and development continue on alternative storage technologies, the only currently available licensed alternatives to relieve this pressure are expanded pool storage or shipping waste to off-site storage facilities. Coupled with the decreasing on-site storage capacity is the reduction in away-from-reactor storage capacity. The Nuclear Fuel Services facility at West Valley, New York has begun to be decommissioned, which has resulted in the return of substantial quantities of spent fuel to the generating facilities. The General Electric facility at Morris, Illinois remains as the only off-site storage alternative.

During the past eighteen months, there have been numerous shipments of irradiated reactor fuel to and through Wisconsin. Beginning in August 1983, Wisconsin has received in excess of 200 highway shipments of spent fuel from the West Valley and Morris facilities. Northern States Power Company currently intends to transport thirty shipments of spent fuel via rail through Wisconsin from its Monticello, Minnesota reactor facility to Morris, Illinois. These shipments began in November 1984 and are expected to continue over the next five years.

In each of these shipping campaigns, no federal agency has considered the need for the shipments, the safety or environmental risks associated with the selected routes or the

propriety of exposing the public to these risks. Nor does any agency require adequate safeguards to protect against emergencies. Unless the NRC exercises its authority under the Atomic Energy Act to regulate and scrutinize these shipments, it is unlikely that any federal agency will.

Three federal agencies could potentially influence spent fuel transportation decisionmaking. The Department of Energy (DOE), under the Nuclear Waste Policy Act of 1982, 42 U.S.C. sec. 10101 et seq. is responsible for the long-term storage and disposal of commercially generated spent fuel. 42 U.S.C. sec. 10131(b). In its draft Mission Plan, prepared pursuant to 42 U.S.C. sec. 10221, the DOE has indicated that its responsibility for spent fuel will not begin until it accepts title to the waste in 1998. Moreover, DOE has specifically informed the State of Wisconsin that its policy against unnecessary shipments of wastes does not apply to NRC licensees prior to 1998, unless such wastes are being shipped to a federal interim storage facility (which do not yet exist).

The Department of Transportation (DOT) also exercises jurisdiction over spent fuel transportation, pursuant to the Hazardous Material Transportation Act, 49 U.S.C. secs. 1801 et seq. DOT has established generic, generally applicable rules for highway transportation of radioactive waste. 49 C.F.R. Part 177. These rules do not address route-specific risks or need. DOT has not yet adopted rules governing the routing of rail or barge shipments, but has only established general rules covering packaging, equipment and handling. 49 C.F.R. Part 174 and 176.

Nevertheless, DOT has uniformly held that state efforts at meaningful regulation are inconsistent with and preempted by these federal regulations. 49 C.F.R. Part 177, App. A. See also Inconsistency Rulings IR-7 through IR-15.

The NRC has express statutory jurisdiction over transportation of spent fuel. 42 U.S.C. secs. 2131 and 2133 expressly require that one must obtain a transportation license prior to any shipment of irradiated reactor fuel. In practice, however, NRc has not required a specific transportation license. Rather, it has by rule created a general license for transportation. 10 CFR sec. 71.12. The NRC has previously held that it will not consider a license amendment for specific waste shipments. In the Matter of Commonwealth Edison Company, et al., Docket No. DD-83-14, decided September 30, 1983.

The NRC currently regulates spent fuel shipments to a limited extent. Under 10 CFR sec. 71.12, the licensee must have an approved quality assurance program under 10 CFR Part 71, Subpart H. Additionally, under 10 CFR sec. 73.37, the licensee must provide for notification to the NRC and local law enforcement agencies, provide escorts, submit limited emergency plans and obtain approval of the selected route. However, the NRC does not independently consider the safety of the particular route, does not evaluate the potential safety and environmental risks of the shipment or the need for the shipment and only gives cursory attention to emergency planning. Additionally, the NRC does not regulate the carrier or consider its safety record.

This discussion of the present scheme of federal regulations reveals a significant gap in the regulatory program. No agency

considers risks associated with specific routes. No agency considers the need for the shipment or the propriety of the shipment in light of potential risks. The public has no opportunity for meaningful input into the decision to transport waste, as this decision is wholly within the discretion of the licensee. Thus, the utilities' ratepayers may be exposed to substantial costs, the public in the vicinity of the route may be exposed to substantial safety hazards and states and municipalities along the route may be exposed to substantial liability and costs for emergency response without any opportunity to question the propriety of the shipment.

The NRC has the primary authority to protect against the risks of radiation exposure. 42 U.S.C. secs. 2021 and 2201; Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm., 103 S. Ct. 1713, 1726 (1983). It has the express authority and responsibility to regulate the transportation of irradiated reactor fuel. As shipments become more frequent, increasing the risk of exposure, it is incumbent upon NRC to strengthen and enhance its regulatory program, to fullfill its statutory directive.

CONCLUSION

For the reason stated herein, the State of Wisconsin respectfully requests the NRC to adopt the rule set forth in Section I herein, to provide the regulatory agency and the public the opportunity to evaluate the propriety of spent fuel

shipments. The State of Wisconsin further requests that the NRC refrain from approving the routes for any shipment of irradiated reactor fuel until the requested rule has been promulgated.

Dated this 13th day of December, 1984.

BRONSON C. LA FOLLETTE
Attorney General

Carl A. Sinderbrand

CARL A. SINDERBRAND
Assistant Attorney General

Attorneys for Petitioner

Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3936

Enclosure F

ENCLOSURE G

Public Comments

Comment Number	Commenter
1.	Wisconsin Radioactive Waste Review Board
2.	Stockbridge-Munsee Community
3.	Paul W. Shafer
4.	Emery Nemethy
5.	Friends For A Non-Violent World
6.	No Comment Number 6
7.	Duke Power Company
8.	Nevada Nuclear Waste Project Office
9.	Utah High Level Nuclear Waste Office
10.	Dawn E. Allen
11.	Illinois State Senator
12.	Illinois Department of Nuclear Safety
13.	City of Chicago
14.	Earth Protector
15.	Nebraska Public Power District
16.	Idaho Governor
17.	League Against Nuclear Dangers
18.	Illinois Attorney General
19.	Northern States Power Company
20.	Colorado Governor
21.	Middle South Services, Inc.
22.	Michael J. Riegert (OTIS)

Public Comments (cont'd)

Comment Number	Commenter
23.	LeBoeuf, Lamb, Leiby and MacRae
24.	GPU Nuclear Corporation
25.	Badger Safe Energy Alliance
26.	Warren A. Viehl
27.	Wisconsin Radioactive Waste Review Board
28.	Wyoming Governor
29.	Sierra Club
30.	Carolina Power & Light Company
31.	Nebraska Director
32.	Illinois General Assembly
33.	Margel R. Johnson
34.	New Mexico Governor
35.	General Electric Company
36.	Lakeland Audubon Society, Inc.
37.	Boston Edison Company
38.	California Highway Patrol
39.	Washington Nuclear Waste Board
40.	Delaware Division of Environmental Control
41.	Ohio Governor
42.	North Carolina Governor
43.	Ellen Brooks
44.	Texas Nuclear Waste Programs Office
45.	Tennessee Valley Authority

Enclosure G

DOCKET NUMBER
PETITION RULE PRM 71-10 (1)

STATE OF
WISCONSIN

RADIOACTIVE WASTE REVIEW BOARD

921 Tenney Building
110 E. Main Street
Madison, WI 53702
(608) 266-0597
(608) 267-7615

December 26, 1984

Mr. Samuel Chilk, Secretary
United States Nuclear Regulatory Commission
Washington, D.C. 20555

RE: PETITION FOR RULEMAKING BY THE STATE OF WISCONSIN

Dear Mr. Chilk:

On behalf of the Wisconsin Radioactive Waste Review Board, I wish to express strong support for the Petition for Rulemaking, filed on behalf of the State of Wisconsin, dated December 13, 1984.

The petition correctly expressed the concerns of the people of Wisconsin in the matter of regulating the transportation of irradiated reactor fuel, and the Radioactive Waste Review Board supports the Attorney General's efforts in this matter.

I also bring to your attention a resolution that was approved by the Radioactive Waste Review Board on September 13, 1984. In the resolution, the Review Board expressed six major concerns about the Northern States Power (NSP) rail shipments from Monticello, MN, to Morris, IL, which travels along the Wisconsin side of the Mississippi River:

** Wisconsin may not have the necessary emergency preparedness to deal with even a minor accident involving high-level radioactive waste:

** The shipping casks that are being used have not undergone actual testing:

** No Federal EIS was prepared for the proposed route, and alternative routes which would avoid paralleling the Mississippi River were not seriously considered:

** There is some question regarding Burlington Northern Railroad's safety record and recent accidents are currently under investigation:

** NSP has not demonstrated that these shipments are necessary at this time:

** Alternatives to shipping may be feasible, pose less risk, and be cost-efficient.

A copy of the resolution is enclosed for your information.

Acknowledged 1/9/85

Although NSP has chosen to virtually ignore the Review Board's request to delay the shipments until the concerns are addressed, and indeed has begun the shipments, our concerns are as valid today as they were when the resolution was passed.

Throughout the route-approval process, the affected public has not been given an opportunity to express its concerns about their own personal safety and the protection of the environment in which they live. The Wisconsin petition gives the public an appropriate opportunity to provide input into the decision-making process.

We look forward to further supporting the Wisconsin petition when the proposed rule is published in the Federal Register and public hearings are conducted.

Sincerely,

Joe Strohl

State Senator Joseph Strohl
Chairman
Wisconsin Radioactive Waste Review Board

JS:mls

STATE OF
WISCONSIN

RADIOACTIVE WASTE REVIEW BOARD

921 Tenney Building
110 E. Main Street
Madison, WI 53702
(608) 266-0597
(608) 267-7615

RESOLUTION APPROVED BY THE
RADIOACTIVE WASTE REVIEW BOARD
9/13/84

WHEREAS: Northern States Power is planning to ship high-level radioactive waste from its nuclear reactor in Monticello, Minnesota, on the Burlington Northern Railroad through Wisconsin to a temporary storage facility at Morris, Illinois, and

WHEREAS: The State of Wisconsin may not have the necessary emergency preparedness to deal with even a minor accident involving high-level radioactive waste, and

WHEREAS: The shipping casks that are planned to be used have not undergone actual testing, and

WHEREAS: No Federal EIS has been done for the proposed route, and alterantive routes which would avoid paralleling the Mississippi River have not been seriously considered, and

WHEREAS: There is some question regarding Burlington Northern's safety record, and recent accidents are currently under investigation, and

WHEREAS: NSP has not demonstrated that these shipments are necessary at this time, and

WHEREAS: Alternatives to shipping may be feasible, pose less risk, and be cost-efficient.

Therefore, be it resolved that:

The Radioactive Waste Review Board seek a Federal EIS on the project.

And be it further resolved that:

The Radioactive Waste Review Board oppose NSP's proposed shipments from Monticello to Morris at this time.

And be it further resolved that:

The Radioactive Waste Review Board ask NSP in writing to delay the proposed shipments until the above concerns can be resolved.

DOCKET NUMBER
PETITION RULE PRM 71-10 (2)

STOCKBRIDGE - MUNSEE

BAND OF MOHICAN INDIANS

DOCKETED
USNRC

STOCKBRIDGE - MUNSEE COMMUNITY

Route 1 Phone Bowler (715) 793-4111
BOWLER, WISCONSIN 54416

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

February 20, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Docketing and Service Branch Docket No: PRM-71-10

To Whom It May Concern:

This is to comment on the State of Wisconsin's petition to the Nuclear Regulatory Commission to establish a regulatory process for the transportation of nuclear waste through the State.

Specifically, the petitioner requests several amendments to 10 CFR Part 71, relating to the advance approval for transportation of irradiated reactor fuel. Subsections (C)(1)(2), of the proposed rules would require the Commission when it receives an application to transport nuclear waste, to issue notice to "... each state along the proposed route..." and to permit "interested person(s), including any state or municipality along the proposed route..." to submit written comments or request a hearing on the application. The ommission of any reference to a Tribal government's interest in such applications is inconsistant with the policies under the Nuclear Waste Policy Act of 1982, P.L. 94-425 (codified at 42 U.S.C. 10101, et. seq.) which generally encourage Tribal consent and consultation in the decision-making process.

Because of this ommission, the Stockbridge-Munsee Community, a federally recognized Tribe in the State of Wisconsin, respectfully opposes the proposed rules.

Thank you for your time and consideration to these comments.

Sincerely,

Kimberly M. Vele

Kimberly M. Vele
Stockbridge-Munsee Community
Tribal Attorney

KMV/esk

FEB 26 1985
Acknowledged by card.

DOCKET NUMBER
PETITION RULE PRM 71-10 (3)
(50 FR 4866)

February 26, 1985

'85 MAR-4

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C.

Attention: Docketing and Service Branch

Subject: Petition for Proposed Rulemaking 10 CFR 71 [Docket No. PRM-71-10]

Dear Sir:

The proposed change to 10 CFR 71, petitioned by the State of Wisconsin, is unnecessary and may in fact be a violation or contradiction of numerous laws which are in effect. The proposed change to 10 CFR 71 would hinder electrical power production from commercial nuclear power plants, which could result in decreased electrical availability to the public and/or subsequently increased electricity costs to the consumer. Currently, the transportation of spent nuclear fuel is governed by 49 CFR 1.53, Appendix A, and the general requirements for packaging and transportation of fissile materials are governed by 49 CFR 173.451-173.459.

Transportation casks, which are used to transport fissile materials, must pass tests which are outlined in 49 CFR 173.467-173.471 and 10 CFR 71.12(b). The offices which are responsible for administering the requirements and approving casks, which have passed the testing requirements, are the Materials Transportation Bureau, Office of Hazardous Materials Regulations (OHMR), U. S. Department of Transportation, Washington, D. C. 20590, and the Transportation Certification Branch Division of Fuel Cycle and Material Safety (NMSS), U. S. NRC, Washington, D. C. 20555. The safety and economic aspects for interstate transportation of radioactive materials was formerly controlled by the Interstate Commerce Commission (ICC). With the Department of Transportation Act of 1966, the U. S. DOT has the regulatory responsibility for safety for the transportation of radioactive materials by all modes of transport in interstate commerce and by all means, except postal shipments. Under the Atomic Energy Act of 1954 (Public Law 83-703, as amended, and 68 Stat. 919, as amended), the U. S. NRC also has responsibility for safety in possession and use, including transport, of special nuclear materials. Casks which have been approved for the transportation of irradiated special nuclear material have been extensively tested by various national laboratories, as subcontracted by U. S. DOE and private enterprise. These tests are fully documented, and many of these tests have been filmed or photographed. Since the early 1950's, there have been many thousands of shipments of irradiated fissile material within the United States. These shipments have been principally land shipments via rail or trucking. There has never been a transportation accident which has resulted in public injury due to the release of radioactive material. Numerous documents have been published which indicate that the probability of radiation injuries due to the transportation of high activity irradiated fissile material is miniscule. In the extreme unlikely material event of a

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add: S Wiggington, 4000MNB3
James G. Henry, 113C55

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transportation accident in Wisconsin, which resulted in a release of radioactive material, multiple response agencies would immediately be available to provide public protection from ionizing radiation. These include the Wisconsin Department of Health and Social Services radiation protection personnel, as governed by Wisconsin State Statute 140.50-140.61 (Administrative Code H.S.S. 157), the U. S. NRC Regional Office Incident Response Team, the U. S. Department of Energy Emergency Response Team (ex. Argonne National Laboratory), and utility health physicists and engineers, all of whom are highly trained radiological protection specialists.

The proposed radiation dose rate limit of 100 Rem per hour, at a distance of 3 feet from the accessible surfaces, without intervening shielding, without Commission approval for transportation, has no technical merit and is specifically designed to hinder all spent fuel shipments from nuclear power facilities irrespective of physical decay time. A more reasonable surface dose rate would be 10,000 Rem/hr at 3 feet, given the engineering design integrity of the transportation casks which have been tested and approved for the shipments of irradiated spent fuel. The most reasonable limits, with more than sufficient safety margins, are those test criteria which are currently found in 10 CFR 71.73, "Hypothetical Accident Conditions."

In conclusion, the proposed change to 10 CFR 71, as petitioned by the State of Wisconsin, could require changes to other existing regulations and would result in adverse consumer economics, without significantly improving public safety.

Paul W. Shafer

Paul W. Shafer
426 W. Decker St.
Viroqua, WI 54665

PWS:dh
Attachments

cc - (all w/attachments)

1. Mr. L. O. McDonnell/Mr. K. O. Brien
   WI DHSS, Section of Radiation Protection
   P. O. Box 309
   Madison, WI 53701

2. Mr. D. Johnsrud
   WI 96th District Assemblyman
   Capitol Building
   Madison, WI 53702

3. Mr. B. Rude
   WI State Senator
   Capitol Building
   Madison, WI 53702

4. Mr. M. Langhus
   Vernon Co. Republican Party
   118 S. Dunlap St.
   Viroqua, WI 54665

5. Mr. T. Thompson
   Minority Senate Leader
   WI State Senator
   Capitol Building
   Madison, WI 53702

would not be a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure Aliens Foreign officials Passports and visas Travel restrictions.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 212—DOCUMENTARY REQUIREMENT: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. In 212.1, paragraph (e) would be revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) *Direct transits*—(1) *Transit without visa.* A passport and visa are not required of an alien who is being transported in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the transportation line and the Service under the provisions of section 238(d) of the Act on Form I-426 to insure such immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country: *Provided,* That such alien is in possession of a travel document or documents establishing his/her identity and nationality and ability to enter some country other than the United States.

(2) *Waiver of passort and visa.* On the basis of reciprocity, the waiver of passport and visa is available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics resident in one of said countries, only if he/she is transiting the United States by aircraft of a transportation line signatory to an agreement with the Service on Form I-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(3) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Pakistan or Sri Lanka. This waiver of passport and visa requirement is not available to an alien who is a citizen or national of North Korea (Democratic People's Republic of Korea) or Democratic Republic of Vietnam and is a resident of the said countries.

(4) *Foreign government officials in transit.* If an alien is of the class described in section 213(d)(8) of the Act, only a valid unexpired visa and a travel document valid for entry into a foreign country for at least 30 days from the date of admission to the United States are required.

* * * * *

(Secs. 103 and 212 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1182))

Dated: January 22, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-2800 Filed 2-1-85; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[Docket No. PRM-71-10]

State of Wisconsin; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking from the State of Wisconsin.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated December 13, 1984, which was filed with the Commission by the State of Wisconsin. The petition was docketed by the Commission on December 17, 1984, and has been assigned Docket No. PRM-71-10. The petitioner requests that the Commission establish a regulatory process, that would provide an opportunity for public participation, for the evaluation and approval of proposed shipments of irradiated reactor fuel (spent fuel).

DATE: Submit comments by April 5, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date

ADDRESSES: All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments may be inspected and copied for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

I. Background

The petitioner points out that the transportation of irradiated reactor fuel is an increasingly significant activity because nuclear reactor facilities are reaching maximum capacity of their spent fuel storage pools. Additionally, there is a reduction in away-from-reactor storage, with the General Electric facility at Morris, Illinois, offering the only off-site storage alternative.

Since the petitioner is a state through which numerous shipments of irradiated reactor fuel have passed and through which future shipments are scheduled, the petitioner has an interest in protecting its citizens by ensuring that transporters of spent fuel have adequately prepared for potential emergencies.

As the petitioner indicates, there have been over 200 highway shipments of spent fuel through the State of Wisconsin since August 1983. Additional shipments have been scheduled by rail and are expected to continue over the next five years.

For each of these shipments, the petitioner alleges, there has been no Federal agency considering the need for the shipments, the safety or environmental risks associated with the selected routes, or the propriety of exposing the public to these risks. The petitioner further alleges that there is no agency currently requiring adequate safeguards to protect against emergencies.

II. Federal Responsibility

The petitioner indicates that there are three Federal agencies which could potentially influence spent fuel transportation decisionmaking.

Department of Energy

The Department of Energy (DOE), under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is responsible for the long-term storage and disposal of commercially generated

January 16, 1985 Editorial from Vernon Co. Wi., Broadcaster-Censor Newspaper.

January 15, 1985

Letter to the Editor

Dear editor,

Once again, it appears that the state of Wisconsin DNR has grossly overstepped their legal authority and responsibility, by attempting to stop Northern States Power Co. rail shipments of spent nuclear fuel to Morris, Ill.

The state organization which has the legal authority and responsibility to protect the citizens of the State of Wisconsin from radiation and radioactive material is the Wisconsin Department of Health and Social Services, Section of Radiation Protection. This is clearly defined in Wisconsin State Statute HSS157 (H57). This includes the protection of community water supplies from radioactivity as defined in HSS 157.16.

However, Wisconsin D.H.S.S. has no authority to stop rail shipments of radioactive material. Obviously, neither does DNR. This authority rests with the federal Department of Transportation as defined in Federal Law 49CFR1.53 Appendix A.

Sincerely,
Paul W. Shafer
426 W. Decker St.

DOCKET NUMBER
PETITION RULE PRM 71-10 (4)
(50 FR 4866)

DOCKETED
USNRC

'85 MAR -4 A10:37

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Feb 26 -85

from the pen of EMERY NEMETHY

[illegible]
[illegible]
[illegible]SBURG 17815

Sec'y - NRC
ATT: DOCKETING &
SERVICE BRANCH

Re: Wisconsin's petition
Fed Reg - Feb 4-85
page 4866

Gentlemen =

We most certainly agree with the petitioner that the NRC "only gives cursory attention to emergency planning."

Their petition demonstrates how DOE and DOT are engaging in the hallowed game of buck-passing.

We hope Wisconsin's efforts will impel them - and the NRC - to remedial action before there's a truly serious accident on the roads.

HOWEVER:
Within the past couple of years, there was a comprehensive article on the transport of radioactive wastes (wasn't it in one of the NRC's proposed rulings?)

It detailed the need for secrecy in waste-moving operations: unmarked trailers, radio checks at regular intervals, escorts by local police vehicles, etc.

We submit that Wisconsin's proposal to announce proposed shipments in the Federal Register would breach this secrecy, and increase the risks of sabotage or theft of the shipments.

Very truly,

Sec'y

D=11
add: S. Wiggington, 6000MNBB
James J. Henry, 113055

MAR 5 1985

Acknowledged by card.....

10

DOCKET NUMBER
PETITION RULE PRM-71-10 (5)
(50 FR 4866)

Program Director
Jeannette Raymond

Board of Directors
Grace Gibas
Frank Wood
Shelley Anderson
Carol Bartoo
Robert Bryant
John Martinson
Victoria Oshiro
Gale Rohde

FRIENDS FOR A
NON-VIOLENT WORLD
1925 NICOLLET AVENUE, SUITE 101
MINNEAPOLIS, MINNESOTA 55403
(612) 870-1501

85 MAR 11 P 5:51

March 7, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington D.C. 20555
Attn. Docketing and Service

Re: 10 CFR Part 71 - Docket No. PRM - 71-10

Dear Friends,

I am writing in support of the petition for rulemaking from the State of Wisconsin, docket number PRM - 71 - 10.

As a member of the general public, it has been impossible to provide imput into the decision making process for nuclear waste shipments.

In coming years, when a federal repository will be placed, shipments will become more frequent. Public health and safety issues and the nuclear industry are and will be vital issues. If there is no public imput the health and safety of the public will not be insured. Part (e) (2) of PRM -71-10 is essential to allow for public imput.

Sincerely,

Jeannette Raymond
Program Director

~~8503150333~~ 850307
PDR PRM
71-10 PDR

DS11
add: J. Henry 13055
S. Wiggerton 4000 MNBB

1/0

MAR 13 1985
Acknowledged by card.

June 18, 1985

NOTE TO RECEIPTS OF PRM 71-10

DOCKETED
USNRC

'85 JUN 18 P12:40

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Please note for your records, that there is no Comment No. 6. This number was inadvertently skipped over. The No. 6 will not be used.

Docketing and Service Branch
Office of the Secretary

DUKE POWER COMPANY
P.O. BOX 33189
CHARLOTTE, N.C. 28242

HAL B. TUCKER
VICE PRESIDENT
NUCLEAR PRODUCTION

TELEPHONE
(704) 373-4531

March 19, 1985

'85 MAR 25 A10:50

Mr. Samuel J. Chilk, Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

DOCKET NUMBER
PETITION RULE PRM 71-10 (7)
(50 FR 4866)

Subject: Duke Power Company
Comments on 10 CFR Part 71,
Docket No. PRM-71-10
State of Wisconsin;
Filing of Petition for Rulemaking

Dear Sir:

The NRC requested in a Federal Register Notice dated February 4, 1985 (Volume 50, Number 23, FR 4866 and 4867) comments on the subject proposed petition for rulemaking. In response, Duke Power Company offers the following for consideration.

General Comments:

Duke Power Company is of the opinion that the Rules and Requirements currently contained in Promulgated Regulations are responsible and adequate for all known conditions and provide a high degree of assurance for the protection of public health and safety and the Safeguards/Safety of spent fuel shipments. Recognizing that absolute assurance is neither required nor possible and reasonable assurance has been achieved by industry initiatives, self-regulation and current Promulgated Regulations (10 CFR Parts 71 and 73), Duke Power Company strongly opposes (emphasis added) any further Promulgated Regulations and the State of Wisconsin Filing of Petition for Rulemaking. Based on NRC Safeguards/Safety Studies, Nuclear Power Industry initiatives and the Nuclear Power Industry historical safeguards/safety transportation of spent fuel by rail and road track record, the NRC regulatory framework, for the protection of public health and safety should take the initiative and reduce in a responsible manner the current requirements and promulgated regulations. A reasonable reduction of current requirements and promulgated regulations, based on industry experience, would be strongly endorsed (emphasis added) by Duke Power Company.

Specific Comments:

(1) 10 CFR Part 71, Section (b)(1) requires a statement that the licensee will obey regulations. In so much as the licensee is required by law to comply with promulgated regulations, this statement is redundant and the result of this statement is not evident.

DS11 1/0
add S. Washington, 4000 MNBB
James J. Henry, 11305S

~~8503270450~~ 850319
PDR PRM
71-10 PDR

Acknowledged by card MAR 25 1985

(2) As indicated in the general comments above, 10 CFR Parts 71 and 73 contain stringent regulations for the transportation of spent fuel. Responsible industry management and the economics of spent fuel transportation will prevent unnecessary spent fuel shipments Therefore, 10 CFR Part 71, Sections (b)(2) and (b)(5) are not needed.

(3) Existing regulations require the NRC approval of travel routes. Therefore, 10 CFR Part 71, Sections (b)(3) and (b)(4) are redundant.

(4) 10 CFR Part 71, Section (b)(6) refers to the design of the spent fuel shipping cask. Since the NRC currently certifies cask design, Section (b)(6) is unnecessary.

(5) The NRC current Hearing Process is time consuming, costly to licensees, redundant in rulings and issues previously resolved and places a negative impact on the licensee. If the NRC were to receive comments and hold Public Hearings on each shipping campaign as indicated in 10 CFR Part 71, Section (c), it is doubtful if spent fuel could realistically be moved within the United States. Additionally, if these Public Hearings included an Environmental Impact Statement as indicated in 10 CFR Part 71(d) for each shipping campaign it would be redundant for most licensees and would impact others as indicated above in cost and time.

(6) The petition states, fuel storage pools at nuclear facilities are reaching maximum capacity. For some facilities it will be necessary to ship spent fuel from these pools in the near future. Regulations should not be overly restrictive so that relief can be achieved. The NRC's criteria for determining the adequacy of available spent fuel storage capacity were published in the FR 5548, Vol. 50, No. 28 dated February 11, 1985. Utilization of transshipment from one site to another within the same utility system is a principle endorsed in the criteria. The imposition of regulations which would severely impede shipment would be in conflict with the guidance published in FR 5548.

We appreciate this opportunity to provide you with our comments. We trust that our comments will be considered and that the Commission will move promptly to resolve this Petition for Rulemaking by the State of Wisconsin and other issues relevant to the transportation of spent nuclear fuel.

If there are any questions or problems concerning this subject, please advise.

Very truly yours,

Hal B. Tucker

Hal B. Tucker

JWD:slb

RICHARD H. BRYAN
Governor

STATE OF NEVADA

ROBERT R. LOUX
Director

NUCLEAR WASTE PROJECT OFFICE

OFFICE OF THE GOVERNOR
Capitol Complex
Carson City, Nevada 89710
(702) 885-3744

March 25, 1985

DOCKET NUMBER
PETITION RULE PRM 71-10 (8)
(50 FR 4866)

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Docketing & Service Branch

RE: PRM-71-10

Dear Sir:

Enclosed please find the Comments of the State of Nevada regarding PRM-71-10 submitted by the State of Wisconsin.

Should you have questions, please do not hesitate to contact me.

Sincerely,

ROBERT R. LOUX
Director

RRL*jm

Encl.

APR 1 1985
Acknowledged by card.

COMMENTS ON PRM 71-10,

STATE OF WISCONSIN

PETITION FOR RULEMAKING REGARDING

TRANSPORTATION OF SPENT FUEL

On December 13, 1984, the State of Wisconsin filed a Petition for Rulemaking to the Nuclear Regulatory Commission requesting that the Commission establish a regulatory process that would provide an opportunity for public participation in NRC evaluation and approval of proposed shipments of irradiated reactor fuel. On February 4, 1985, the Commission published the Petition. 50 Fed. Reg. 4866. These comments are responsive to the Commission's request for comments contained therein.

The State of Nevada has been notified that a potentially acceptable site for the development of a high-level nuclear waste repository exists in the state. In addition, the Department of Energy has identified, in its Draft Environmental Assessment for Yucca Mountain, that site as likely to be characterized under § 113 of the Nuclear Waste Policy Act. Because of the potential development of such a repository and the consequent transportation of an irradiated reactor fuel to the repository, the State of Nevada has an interest in the outcome of PRM 71-10.

Nevada generally endorces the proposed amendments to 10 CFR Part 71 contained in PRM 71-10 and recommends that the Commission adopt the proposed amendments.

Nevada's particular concern is that the spent fuel, title to which will transfer to the Department of Energy pursuant to § 123 of the Nuclear Waste Policy Act, 42 USC 10143, and which will be transported by the Department or its contractor, see § 137 NWPA, 42 USC 10157, will be subject to the proposed amendments. Nevada interprets 10 CFR Part 71 to apply to such spent fuel inasmuch as the Department of Energy would be a "licensee" as that term is used in Part 71. In the event that

this interpretation is incorrect, the proposed amendment to 10 CFR Part 71 should clarify the application of the proposed amendment to the Department of Energy and its contractors.

101 State Capitol Building
Salt Lake City, UT 84114
Telephone 801-533-4372

DOCKET NUMBER
PETITION RULE PRM 71-10
(50 FR 4866)

(9)

high level nuclear waste office

Norman H. Bangerter, Governor

Patrick D. Spurgin, Director
Jack Wittman, Associate Director

March 29, 1985 APR -1 P3:03

Samuel Chilk, Secretary
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chilk,

The State of Utah Office of High-Level Nuclear Waste would like to offer its comments on the State of Wisconsin's Petition for Rulemaking (PRM-71-10; December 17, 1984). The safety of spent fuel transportation is, and will continue to be, an issue of great importance to the citizens of Utah. We recognize and support the State of Wisconsin's request for a more active Federal role in the regulation of spent fuel shipments. Such a role is essential now and in the future, when the volumes of these shipments will increase significantly.

We therefore agree with several of the concepts forwarded in the Wisconsin proposal. We support the concept that shippers should justify the need for any and all spent fuel shipments. The risks of such transport have been documented and should be diminished if at all possible. We further support the concept of identification of route-specific conditions or hazards which create unique risks of accidents, sabotage or radiological exposure. Although current regulations allow for such identification, they do not encourage it as a matter of course; this process, however, could significantly reduce the probability of unnecessary public radiological exposure.

Identification of potentially hazardous conditions is directly related to cask safety. This office has conducted a review of the technical literature on cask design, development and performance. This survey strongly suggests that the safety of existing casks is sufficiently uncertain as to warrant more extensive testing. Such testing would necessarily address potentially hazardous conditions for each proposed route.

The State of Utah Office of High-Level Nuclear Waste believes that the primary concern of carriers, shippers and regulatory agencies should be the safety of the public. We therefore endorse the conceptual basis of the State of Wisconsin's petition and urge that the concepts and procedures discussed in the petition be fully addressed by responsible Federal authorities.

Sincerely,

Patrick D. Spurgin, Director
High-Level Nuclear Waste Office

DS11
Mr. S. Washington, 4616 MNBB
Washington, DC 20555

Acknowledged by card APR 8 1985

DOCKET NUMBER
PETITION RULE PRM-71-10 (10)
(50 FR 4866)

340 W. 2nd Street
P.O. Box 224
Trempealeau, WI 54661

April 1, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

John Phillips, Chief
Rules and Proceedures Branch
Division of Rules and Records
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Sirs:

I am writing to support the Petition for Rulemaking from the State of Wisconsin, docket number assigned PRM-71-10.

I agree with the petition that there is a gap in the process of considering the safest route and the overlap of the three agencys listed in the petition (DOE,DOT&NRC) that have no policy in force to allow for public input or or the need of the shipments in the light of severe ramifications which would affect the environment or any endangered species along a route.

The proposed amendments to 10 CFR Part 71 address this problem and others associated with these shipments.

I live within 500 yards of the current route being used by NSP to ship from Montecello, MN to GE in Morris, IL. The incredible thing about these current shipments is that they are in a currently unliscensed cask, a temporary liscense was granted them, the casks being used have never been tested to ch -eck for strength when heated to the temperature at which they are traveling full of spent fuel, and then, submurged into the the cold waters of the Mississippi River. This particular route is 80% along the Mississippi and through 3 State Parks and a National Wildlife Refuge.

The conditions under which NSP is shipping are also suspect as they sued GE to take back the spent fuel and GE lost and must bear the majority of the costs of the shipments. This is only to the economic gain for NSP to ship now as their storage pool at Montecello has about 4 more years of space left in it a current use rates. Therefore, I most adamantly support the Section number V. Conclusions in the petition requesting that the NRC not approve any further routes or shipments, until this rule has been promulgated.

Sincerely,

Daun E. Allen

Daun E. Allen

P.S. I am sending copies of this letter, and the page from the federal Register to my local representatives, state and federal.

Acknowledged by card APR 8 1985

DOCKET NUMBER
PETITION RULE PRM-71-10
(50 FR 4866)

(11)

323 STATE HOUSE
SPRINGFIELD, IL 62706
217/782-8204

107 S. KENNEDY
P.O. BOX 80
BRADLEY, IL 60915
815/939-1661

ILLINOIS STATE SENATE

JEROME J. JOYCE
SENATOR
43RD LEGISLATIVE DISTRICT

COMMITTEES
CHAIRMAN - AGRICULTURE, CONSERVATION AND ENERGY
MEMBER - ELECTIONS AND REAPPORTIONMENT
LOCAL GOVERNMENT
EXECUTIVE APPOINTMENTS AND ADMINISTRATION

'85 APR -4 P1:03

DOCKETING & SERVICE BRANCH

April 1, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing & Service Branch

Dear Sir:

I am writing in support of the State of Wisconsin's petition for rule-making in Docket PRM-71-10.

Since January 1972, General Electric's Morris Operation has served as the nation's only storage facility for commercially produced irradiated reactor fuel. When the U.S. government develops an interim storage facility or a disposal facility, this fuel will be removed from the Morris Operation and transported again; which raises the serious question of the necessity of shipments to Morris.

It is imperative that there be a legal mechanism for public comment on proposed nuclear waste shipments and I believe that the State of Wisconsin's proposed amendments to 10 CFR Part 71 provide for an effective evaluation of the propriety of such shipments.

Sincerely,

Jerome J. Joyce
ILLINOIS STATE SENATOR

Acknowledged by card APR 8 1985

DOCKET NUMBER
PETITION RULE PRM-71-10 (12)
(50 FR 4866)

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY
1035 OUTER PARK DRIVE
SPRINGFIELD 62704
(217) 546-8100

TERRY R. LASH
DIRECTOR

DAN L. WILLIAMS
DEPUTY DIRECTOR

'85 APR -4 P1:05

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 3, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Service Branch

Re: State of Wisconsin; Filing of Petition for Rulemaking. Docket No. PRM-71-10 (50 Fed. Reg. 4866-4867, Feb. 4, 1985)

On behalf of the State of Illinois, the Illinois Department of Nuclear Safety (IDNS) hereby submits its comments on the above-referenced petition filed by the State of Wisconsin. The petition requests changes in the U.S. Nuclear Regulatory Commission's (NRC) regulation for shipments of irradiated ("spent") nuclear fuel in order to require the NRC to judge the necessity and safety of individual spent fuel shipments and to allow the public formal opportunity to comment on the NRC's written evaluation.

The State of Illinois shares Wisconsin's concerns about spent fuel shipments, and it has adopted the strongest program in the nation to assure the safety of such shipments. In July, 1983, Governor James R. Thompson instructed IDNS to inspect and escort all commercial spent fuel shipments traveling in Illinois. A specially trained IDNS health physicist inspects each shipment to assure that all applicable federal and state radiation protection requirements are met. A shipment in violation would not be allowed to proceed. When a shipment is found in conformance with applicable regulations, the health physicist follows the shipment in a van fully outfitted with radiation detection instruments and emergency response equipment to its destination in Illinois or until it departs Illinois. (In the past, for shipments with a destination in Wisconsin, IDNS has provided copies of its inspection reports to the State of Wisconsin.) The IDNS health physicist maintains radio communication with the shipment and with all involved agencies throughout the journey. Moreover, the Illinois State Police inspect and escort the trucks carrying these shipments, and the Illinois Commerce Commission provides similar safety inspections for shipments by rail. As a result

Acknowledged by card APR 8 1985

of Governor Thompson's initiative, the State of Illinois has had substantially more experience with inspecting and escorting spent fuel shipments than any other state. To date, some 276 such shipments have been inspected and escorted, and no violations of radiation protection standards have been detected.

The State of Illinois also has adopted a comprehensive plan for assuring the public's protection in the event of an accident involving a shipment of spent fuel. Chapter X of the Illinois Plan for Radiological Accidents provides for the coordination of the state agencies' response with those of federal and local governments. This chapter on transportation accidents has been provided to the local governments along the routes for spent fuel shipments, and the IDNS staff has conducted numerous training sessions for local governmental officials. Under the plan, local units of government are given advance notification of spent fuel shipments traveling through their jurisdictions. In the event of an accident, IDNS trained personnel would be responsible for assessing the degree of radiological risk and recommending the appropriate protective actions and mitigation measures. Other state agencies and local governmental units would be responsible for the non-radiological aspects of an accident.

Even with this comprehensive program in Illinois, the federal government must not reduce its level of effort to assure protection of the public from the radiological hazards posed by spent fuel shipments. On September 6, 1984, IDNS wrote strongly opposing the NRC's proposed relaxation of the requirements on spent fuel shipments. (Re: Modification of Protection Requirements for Spent Fuel Shipments, 10 CFR Part 73.37 (49 Fed. Reg. 23867-23872, June 8, 1984.) Indeed, particularly in the area of advance notification of shipments, the NRC's regulation must be strengthened, not weakened.

The State of Illinois strongly supports efforts to ensure that spent fuel is transported in a safe manner. For this reason, the State of Illinois has implemented an extensive safety program which does not, however, unduly restrict local decisions. The inspection and escort program in Illinois has clearly demonstrated that shipments of spent fuel can be accomplished safely without imposing burdensome procedures.

The State of Illinois believes that states should adopt their own safety programs, to complement NRC regulations, for the transportation of spent fuel within their borders. The State of Illinois has already done this to ensure the highest degree of safety possible.

If you have any questions about the spent fuel inspection and escort program of the State of Illinois or the State's comments on the above referenced petition, do not hesitate to contact me.

Sincerely,

Terry R. Lash
Director

TRL:dmm

DOCKET NUMBER
PETITION RULE PRM-71-10 (13)
(50 FR 4866)

City of Chicago
Harold Washington, Mayor

Department of Law
James D. Montgomery
Corporation Counsel

City Hall, Room 511
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-6900

April 1, 1985

Mr. Samuel J. Chilk
Secretary
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Petition for Rulemaking,
Shipments of Irradiated
Reactor Fuel. Docket
No. PRM-71-10

Dear Mr. Chilk:

Enclosed herewith kindly find one original and two (2) copies of the Comments of the City of Chicago, in the captioned matter, for filing with the Commission.

Very truly yours,

Dodge Wells
Assistant Corporation Counsel
Public Utilities Division

Bernard Rane

Bernard Rane
Assistant Corporation Counsel
Public Utilities Division
(312) 744-6904

BR/vg

APR 8 1985
Acknowledged by card.....

DOCKET NUMBER
PETITION RULE PRM 71-10 (13)
(50 FR 4866)

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Petition for Rulemaking Concerning the Shipments of Irradiated Reactor Fuel	)))	Docket No. PRM-71-10

COMMENTS OF CITY OF CHICAGO

CITY OF CHICAGO

JAMES D. MONTGOMERY
Corporation Counsel

DODGE WELLS
Chief Assistant
Corporation Counsel
Public Utilities Division

BERNARD RANE
Assistant Corporation Counsel
City Hall, Room 610
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-6904

Due Date: April 5, 1985

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Petition for Rulemaking Concerning the Shipments of Irradiated Reactor Fuel	)))	Docket No. PRM-71-10

COMMENTS OF CITY OF CHICAGO

The City of Chicago ("City") hereby submits its Comments to the Petition of the State of Wisconsin filed with the Nuclear Regulatory Commission ("Commission") for Rulemaking to establish a regulatory process that would provide an opportunity for public participation for the evaluation and approval of proposed shipments of irradiated reactor fuel (spent fuel). Notice of Wisconsin's Petition appeared in the Federal Register, Volume 50, Number 23, on February 4, 1985. The Commission has directed that interested parties may file comments to the Petition for Rulemaking on or before April 5,1985.

Chicago supports the principle that states and local governments be given the opportunity to provide the NRC with relevant information concerning safety and the environmental consequences of proposed shipments and routes by which nuclear spent fuel is moved in interstate commerce.

Specifically, the City endorses the following proposed rules as set forth in Wisconsin's Petition for Rulemaking which provide an opportunity for local government participation:[1]

A.) Rule (c)(1) which requires the NRC to notice in the Federal Register an application for approval for the transportation of irradiated reactor fuel;

B.) Rule (c)(2) which provides for written comments to the application by interested persons including states and municipalities. Also, the commenting persons may request a hearing by the NRC concerning the applicant's compliance with existing rules and requirements;[2]

C.) Rule (c)(3) which requires an NRC decision on an application if a hearing or hearings are held under subsection (c)(2);

D.) Rule (d) which requires the filing of an environmental impact statement if the NRC's action mandates the same under federal law, rules and requirements.

As a clarification of Chicago's endorsement of Rule (c)(2),

1 Parts (a) and (b) of the Proposed Rule concerns an application process for proposed shipments. Since Chicago supports Rule (c)(1), Chicago endorses Wisconsin's proposal that an application be required. However, Chicago does not wish to express a position on the specific items which should be included in the application.

2 The Proposed Rule, as written, may be interpreted as permitting comments and a hearing only on the question of whether the applicant has fulfilled the requirements of § 73.37 [Proposed Rule (b)(1)]. Chicago is more interested in an opportunity to provide the Commission with information on route-specific conditions and alternative routes [Proposed Rules (b)(4) and (b)(5)].

the NRC shall have the discretion to conduct or not to conduct a hearing when requested by a commenting person. If a hearing is granted by the NRC, the person opposing the application shall have the burden of proof that the applicant has failed to comply with applicable rules and requirements.

At the present time, the NRC furnishes seven (7) days notice to the governor, or his or her designee, of those states in which the irradiated reactor fuel is to be transported. It is the City's understanding that the notice is provided by mail and therefore the actual communication of transport is not received by Illinois until three (3) days before shipment. The City would urge the NRC to increase the notice period.

In Illinois, the designee of our governor is the Illinois Department of Nuclear Safety ("DNS"). DNS, in collaboration with the Department of Law Enforcement Division of State Police, the Emergency Services and Disaster Agency, the Department of Transportation and the Railroad Section of the Illinois Commerce Commission, are responsible for insuring the safe movement of irradiated reactor fuel within Illinois borders.

Some of the activities which DNS engages in are the inspection of the rail and truck containers in which the spent fuel is shipped; an inspection of the rail track within 24 hours prior to rail movement; an escort service by which vehicles with radio communications follow the rail and/or truck shipment until it arrives at a site in Illinois or leaves the Illinois border. Although DNS does an excellent job in protecting the public from potential accidents involving the movement of irradiated reactor

fuel, it has no control over the volume of shipments and the routes by which this traffic moves within the State of Illinois.

Chicago is unaware of the shipments of spent fuel within its geographical boundaries. The City does not receive notice from the NRC of these proposed movements whether by rail or by truck. Its agencies, such as police, fire and health, are not alerted until a serious problem arises.

The State of Wisconsin has performed a public service by focusing attention on a problem which will escalate and deepen in the near future. Periodic review and an invitation for state and local government comments to existing rules and regulations of the NRC on this subject will promote and protect the public interest and safety.

Respectfully submitted,

CITY OF CHICAGO

JAMES D. MONTGOMERY
Corporation Counsel

Dodge Wells
Chief Assistant
Corporation Counsel
Public Utilities Division

Bernard Rane

Bernard Rane
Assistant Corporation Counsel
City Hall, Room 610
Chicago, Illinois 60602
(312) 744-6904

earth protector™

DOCKET NUMBER
PETITION RULE PRM-71-10 (14)
(50 FR 4866)

'85 APR -5 P3:59

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

ATTN: Docketing and Service Branch

April 4, 1985

Dear Sir or Madam:

In accordance with existing regulations that allow for public comment on petitions for rulemaking published in the Federal Register please see Earth Protector, Inc. comments regarding Docket No. PRM-71-10 published February 4, 1985 in Vol. 50, No. 23.

Earth Protector, Inc. is a Minnesota based public interest corporation dedicated to the protection of the public resources of our nation - the land, air, water, and those who use these resources - from contamination.

The eternal peril posed by the waste from the nuclear industry has been well documented and needs no repeating in Earth Protector comments other than for us to continue to indicate whenever possible that the continued production of electricity with nuclear power is stupid.

What needs to be done now is apply common sense to the disposal of the irradiated fuel assemblies. This is not being done. Here in Minnesota, the Northern States Power Company (NSP) is shipping spent fuel assemblies from a temporary storage facility to another temporary storage facility in Morris, Illinois and crossing the State of Wisconsin to accomplish this fiendish task.

The public does not have the information as to the safety of the casks being used, the necessity of the shipments, the proper routes to take and the entire range of questions that deal with the protection of our lives.

In regard to the shipments leaving Minnesota it has been the public that has had to supervise the repair of poorly maintained tracks in addition to raising the key question of shipping from a temporary facility to a temporary facility.

Earth Protectors do not feel that simply shipping this deadly material from one state to another addresses this problem in a mature and responsible manner but rather reflects a serious lack of communication between the public and the administration responsible for looking after our interest.

Since the NRC is the primary responsible agency for public protection from the hazards of nuclear waste the rulemaking on this issue is important and the key at this time is to order a stop to the shipments until we can clearly assess the total problem and put an intelligent and comprehensive plan into work.

Acknowledged by card APR 8 1985

-more-

1138 Plymouth Building, Minneapolis, Minnesota, 55402 612-375-0202

A community right-to-know process must be established with federal, state and local agencies so that public information regarding safety criteria and problems is released in a timely and efficient manner. All parties involved should meet to develop details of this process.

Thank you for the opportunity to comment on the State of Wisconsin petition for rulemaking request.

Yours For A Cleaner Earth

Sincerely,

Leslie Davis
President

LD/wo

1138 Plymouth Building, Minneapolis, Minnesota, 55402 612-375-0202

PETITION RULE PRM-71-10 (15)
(50 FR 4866)

Nebraska Public Power District

GENERAL OFFICE
P O BOX 499 COLUMBUS NEBRASKA 68601-0499
TELEPHONE (402) 564-8561

'85 APR -5 P12:57

April 1, 1985

Mr. Samuel J. Chilk
Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Docketing and Service Branch

Re: Docket PRM-71-10 State of Wisconsin;
Petition for Rulemaking
50 Fed.Reg. 4866 (Feb. 4, 1985)

Dear Mr. Secretary:

A. Introduction

The transportation of radioactive materials has gained some attention during the last several years as a result of increased shipments of commercial spent fuel and other high-level radioactive waste. These increased shipping activities reaffirm that the transportation of radioactive materials constitutes an infinitesimal radiological risk to the public. Despite the fact that no one has ever been killed or injured from radiation in over twenty years of commercial spent fuel transportation involving thousands of spent fuel elements, including over 200 recent highway shipments in Wisconsin, there continues to be a small group of disbelievers and opponents of nuclear energy who maintain that current standards and regulations for the transportation of spent nuclear fuel are totally inadequate.

Nebraska Public Power District is extremely interested in the regulations relating to spent fuel shipments because of the continued transfer of spent fuel from Cooper Nuclear Station to General Electric's Morris Operation. In addition to our comments herein, we fully endorse the comments filed on this subject by the Nuclear Transportation Group.

Before addressing the particular amendments to 10 C.F.R. 71 proposed by the State of Wisconsin, it is important to emphasize that the Petitioner is operating under the false premise that the transportation of radioactive materials is seriously under-regulated. Nothing could be further from the truth. Regulations governing the shipment of spent nuclear fuel were originally conceived in 1946 by the National Academy of Sciences and since that time the framework of regulations which the State of Wisconsin finds to be so inadequate have been adopted by the International Atomic Energy Agency. Although there have been revisions from time to time, "the regulations have

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changed little because in 35 years of actual use, they have proven to be quite effective in minimizing public injury from RAM [radioactive materials] in transport."[1]

The amendments proposed by the State of Wisconsin do not afford greater protection to the public but rather would hinder the ability of shippers and carriers to continue transporting radioactive materials in a reasonable and highly safe manner.

The State of Wisconsin has proposed several amendments to 10 C.F.R. Part 71 providing for advance approval for transportation of irradiated reactor fuel. NPPD believes that the proposed changes are generally unnecessary, redundant and/or inappropriate. Most specific proposals will be addressed separately.

B. Section (b)

Among the proposed amendments is the following:

> (b) an application for approval of a shipment of irradiated reactor fuel must be made in writing at least 120 days prior to the proposed shipment and must demonstrate that:
>
> (1) The applicant has fulfilled the requirements of §73.37 of this chapter;

This requirement is redundant. A licensee is currently required under 10 C.F.R. §73.37 to meet the specified requirements for physical protection of irradiated reactor fuel in transit. Since there is already an obligation to comply with the requirements, it is unnecessary to restate the requirements.

Moreover, the requirement that the licensee must demonstrate that it has fulfilled all the requirements of 10 C.F.R. §73.37 is unreasonable, unnecessary and would in part, run contrary to the purposes of §73.37. As a general comment, it is unclear what type of "proof" would be required in order to "demonstrate that the applicant has fulfilled the requirements of §73.37." However, it is very clear that providing the information requested by the State of Wisconsin could be extremely counter productive. A number of the requirements of 10 C.F.R. §73.37 involve safeguards. Requiring utilities to disclose certain safeguards is a grave mistake. For example, paragraphs 10 C.F.R. §73.37(b)(2), (3), (5) and (8) involve safeguarded information. If the State of Wisconsin desires the right to submit written comments and request a hearing regarding a licensee's compliance with those sections, it would require the licensee to make available for public inspection detailed information relating to security of the shipments. This is absurd and would defeat the purpose of 10 C.F.R. §73.37.

---

[1] SANDIA REPORT "Analysis of Recent Council on Economic Priorities Newsletter", SAND 82-1250 p. 9.

The Wisconsin request also proposes that the licensee shall demonstrate that:

> (2) The proposed shipment is necessary to meet the requirements of the licensee's operating license or required minimum fuel storage capacity;

This proposed requirement would be extremely detrimental to the operators of nuclear reactors and their ratepayers without increasing public safety. NPPD is aware of no operating license requirements that would compel the shipment of spent fuel. In addition, this proposed regulation would stifle prudent utility planning and decision-making by prohibiting a utility from transporting spent fuel to some other storage facility at the most opportune and cost effective time. Rather than allowing a utility to transfer fuel when it deemed necessary or prudent, this proposed requirement would force a utility to wait until its on-site fuel storage capacity was exhausted before commencing shipments. This could result in reactors being shut down because of lack of available storage capacity either on or off-site.

The proposed amendment would require licensees to demonstrate that:

> (3) The proposed route complies with all applicable DOT safety and routing regulations;

This is another redundant and unnecessary requirement.

In addition, the proposed amendment would require demonstration that:

> (4) There are no route-specific conditions or hazards which create unique risks of accidents, sabotage, or radiological exposure; and

Petitioners seek to impose a standard that can never be met. Every route regardless of its location or characteristics is going to have certain unique risks of accidents or sabotage that are different from any other particular route. However, that doesn't mean that the "risks" are significant. As a matter of fact, such "risks" have been anticipated in the design of the casks. The design and engineering standards which have been developed for the transportation casks result in a container which can withstand extraordinary accident conditions.[2]

The licensee under the proposed amendments would also have to demonstrate that:

> (5) The applicant has evaluated alternatives to the proposed shipment and alternative routes and has demonstrated that the proposed shipment is the best alternative for handling the irradiated reactor fuel which provides the least risk of radiological exposure to the public.

---

[2] Id. at 9-12.

This provision would make it next to impossible to ship spent fuel. The risk of radiological exposure to the public under current shipping requirements and procedures is very remote. Not shipping at all may theoretically be a lesser risk although the reduction, if any, is extremely small.

The proposal also requires the shipper to demonstrate that:

> (6) The proposed shipping cask is shown to be capable of withstanding all reasonably foreseeable incidents along the proposed shipping route that could interrupt the shipment.

As previously mentioned, the casks are already required to be designed to withstand very severe accident conditions. In addition, full scale testing has been conducted by Sandia National Laboratories and others and has confirmed the accuracy of computer models in predicting the performance of casks under real accident conditions. To require additional demonstration from the licensee serves no public purpose.

C. Section (c)

The proposed language under (c)(2) regarding public hearings is totally unnecessary and would undermine the purposes of 10 C.F.R. §73.37 as discussed supra.

D. Section (d)

The Commission has previously determined that the environmental consequences of spent fuel transportation are extremely small. See 10 C.F.R. §51.20 (Summary Tables S-3 and S-4). Accordingly, an environmental impact statement is not required and there is no justification for imposing such a requirement.

E. Conclusion

For the foregoing reasons, Nebraska Public Power District believes that none of the amendments proposed by the State of Wisconsin should be adopted as they are unnecessary, unreasonable and inappropriate. Therefore, the Petition should be denied.

Sincerely,

Jay M. Pilant

Jay M. Pilant
Manager, Technical Staff
Nuclear Power Group

/rh

DOCKET NUMBER
PETITION RULE PRM-71-10 (16)
(50 FR 4866)

JOHN V. EVANS
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
BOISE 83720

'85 APR -5 P12:57

April 1, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing & Service Branch

Dear Sir:

We would like to offer comments on the proposed petition by the State of Wisconsin for rulemaking requiring application from radioactive materials licensees to the U.S. NRC 120 days before commencement of fuel rod shipments. The basic reason for the rulemaking petition was to allow more public input on transportation of fuel rods.

While we highly encourage public participation in all aspects of the issue of transportation across the United States, we believe the 120 day application rule would provide undue hardships on the shipper and carrier.

The U.S. NRC and DOT have provided for public input in years past which has been adequate for route selection. In the past rule making hearings we were able to designate certain routes in Idaho as perferred routes for fuel rod shipments. Since the rulemaking and route selection over two years ago, there have been no accidents involving fuel rod shipments.

We are concerned, however, with the lack of enforcement and inspection procedures needed to assure that proper notification is made by the shipper and that information submitted is accurate. The regulations do not identify the regulatory

DSI 001 S Higgins, 4000 Miller
Jones Hwy Rm 5
Grand Junction, AL 5.31

APR 5 1985
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agency responsible for the inspections.

We appreciate this opportunity to provide input on this issue.

Sincerely,

JOHN V. EVANS
GOVERNOR

JVE/ds

LAND. LEAGUE AGAINST NUCLEAR DANGERS.
ROUTE 1, RUDOLPH, WISCONSIN 54475

DOCKET NUMBER
PETITION RULE PRM 71-10 (17)
(50 FR 4866)
'85 APR -5 P12:12

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

March 29, 1985

Secretary of the Nuclear Regulatory Commission
Washington, DC 20555

ATTN: Docketing and Service Branch

Gentlemen: RE: Docket # PRM-71-10 - State of Wisconsin, Filing of Petition for Rulemaking

We support the State of Wisconsin in this filing of petition for rulemaking as we agree that Northern States Power Company has not adequately prepared for an accident involving spent reactor fuel in making the shipments from Monticello to Morris, Illinois.

This railroad traverses wetlands, passes along rivers and cliffs with little or no access, travels by tank farms storing flammable gases and a six-mile stretch of trestle involving the Mississippi River. There is sensitive environmental resources in this rail corridor, including fish spawning areas, protected wildlife habitats, wetlands and endangered and threatened species.

Certainly there needs to be consideration given to the need for the shipments and the safety and environmental risks associated with various routes. The training of firefighters, law departments and hospitals is inadequate at this time.

We ask that you adopt the proposed rule that will provide the NRC and the public the opportunity to evaluate the propriety of spent fuel shipments and the ability of emergency personnel to respond to same.

Sincerely,

Naomi F. Jacobson

(Mrs.) Naomi Jacobson
Co-Chairperson & Director
LAND, Inc.
525 River Road
Rudolph, WIS. 54475

NFJ

cc: State of Wisconsin
Radioactive Waste Review Board

8504100459 850405
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DS11 10
add S. Wojcicka, 4000 MNBB
Gary G. Harp, 11B55
Frank Young, AR-5031

Acknowledged by card APR 8 1985

"To question and learn ... that we may preserve and protect"

OFFICES OF THE ATTORNEY GENERAL

160 North LaSalle Street
Chicago, IL 60601-3175

Administration • Room 900
Disabled Persons Advocacy • Room 806
General Law Division • Room 850
Industrial Commission • Room 431
Inheritance Tax Division • Room 900
Senior Citizen Advocacy • Room 900
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Informational Systems Division • Room 1811
Investigations Division • Room 2127
Public Utilities Division • Room 2315

DOCKET NUMBER
PETITION RULE PRM-71-10 (18)
(50 FR 4866)

NEIL F. HARTIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS

'85 APR -5 A10:14
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Writer's Direct Dial Number
(312) 793- 7642

April 4, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
1717 H. Street, N.W.
Washington, D.C. 20555

Re: In the matter of the Petition of the State of Wisconsin for the Adoption of a Rule Regulating the Transportation of Irradiated Reacter Fuel, Docket No. PRM-71-10

Dear Sir or Madam:

Enclosed please find an original and five copies of the Comments on Petition for Rulemaking by Attorney General of the State of Illinois in regard to the above-mentioned matter. Please send one stamped copy back to our office.

Very truly yours,

Michael J. Hayes
Director of Advocacy
160 North LaSalle Street, Rm. 900
Chicago, Illinois 60601
312/793-7642

jg

Enclosures

DS11 add:
S. Wigginton, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037

APR 8 1985

Acknowledged by card.

DOCKET NUMBER
PETITION RULE PRM 71-10 (18)
(50 FR 4866)

DOCKETED

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSIONERS

'85 APR -5 A10:14

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

IN THE MATTER OF	)	
THE PETITION OF THE STATE OF	)	
WISCONSIN FOR THE ADOPTION OF	)	Docket No. PRM-71-10
A RULE REGULATING THE TRANSPORTATION	)	
OF IRRADIATED REACTOR FUEL	)	

COMMENTS ON PETITION
FOR RULEMAKING BY ATTORNEY GENERAL
OF THE STATE OF ILLINOIS

Neil F. Hartigan, Attorney General of the State of Illinois, on behalf of the People of the State of Illinois, submits these comments to the Nuclear Regulatory Commission in support of the State of Wisconsin's Petition For Rulemaking in the above matter. These comments are offered as a supplement to the State of Wisconsin's reasons for the adoption of the proposed rule which reasons are hereby adopted and reasserted.

I.

THE INTEREST OF THE STATE OF ILLINOIS IN THE SAFETY OF NUCLEAR FUEL TRANSPORTATION

A. State Governmental Activity

Illinois has a strong and abiding interest in the safety of its citizens and its environment from any potential adverse impact that might result from either intentional or accidental

activities or omissions related to nuclear fuel transportation taking place in whole or in part in Illinois.

The Governor and the Attorney General of Illinois sent a joint letter dated September 23, 1983 (copy attached and marked "Exhibit A") to Chairman Palladino setting forth numerous concerns related to this issue and its potential impact in Illinois.

Illinois Public Act 83-1342 became effective on September 7, 1984. This Nuclear Safety Preparedness Act (Ill.Rev.Stat., ch. 111 1/2, par. 4304, et seq.) (Copy attached and marked "Exhibit B") established a state-wide program designed to allow Illinois state officials to engage in activities associated with the preparation and implementation of plans to deal with the effects of nuclear accidents that might take place in Illinois.

There is currently in place in Illinois a program whereby staff members of the Illinois Department of Nuclear Safety and the Illinois State Police meet all shipments of spent fuel at Illinois' borders, inspect for vehicle safety and compliance with federal radiation standards, and escort the shipments through the state.

Notwithstanding the foregoing efforts of Illinois, there is a distinct need in Illinois and across the nation for further regulatory effort such as that which is now proposed by the State of Wisconsin. Route-specific advance planning for nuclear waste transport should be a highly significant but is, in fact, a much

neglected component of the regulatory framework currently in place. The proposed rule will strengthen that framework.

B. Citizen Concern

The Attorney General is personally aware of the keen interest of many individual Illinois citizens and numerous groups active throughout the State of Illinois with respect to nuclear waste transportation safety issues. The Attorney General feels strongly that the concerns and questions raised by these citizens and groups need to be addressed and that a forum for their expression and for the provision of citizen input is both desirable and needed. Adoption of the proposed rule will provide this forum and a reasonable opportunity to express concerns and offer information that can be extremely helpful in reaching sound decisions on routing.

C. Illinois' Concerns are Significant And, In Some Instances, Unique

Illinois is well-known as being a segment in numerous major national transportation corridors and, in many instances, is a crucial hub for the national transportation system. These include highway, rail, waterway, and air transportation systems. Further, the location of the General Electric nuclear fuel facility in Morris, Illinois and the numerous shipments of spent fuel to it raise issues of safety that are unique to Illinois. There is a history in Illinois of routing nuclear fuel shipments through the metropolitan Chicago area and the existence of such high density residential and commercial areas in certain routes

further heightens Illinois' interest in route-specific safety considerations.

Finally, the various states have been delegated responsibilities in relation to emergency response measures related to nuclear fuel transportation. Nothwithstanding the present federal regulatory scheme in relation to nuclear fuel transportation issues, the necessity of specific shipments and route-specific safety concerns are justifiably seen as taking on regional and, oftentime, local significance and concern that are not presently addressed in a meaningful fashion at the federal level. It is for this reason that the Illinois Attorney General urges the adoption of the rule proposed by Wisconsin.

II.

THE FEDERAL REGULATORY GAP

A significant report entitled Social and Economic Aspects of Radioactive Waste Management: Considerations for Institutional Management (hereinafter "the Report") was issued in 1984 by a distinguished panel of experts under the aegis of the National Research Council whose members are drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine.

The Report addressed numerous issues regarding the transportation of nuclear waste in the United States. One of those issues was the present regulatory framework (See pages 123 through 131).

The Report concluded at page 123:

> First, a sufficiently broad-based and uniform regulatory regime to assure the safe transport of radioactive wastes may not exist; second, redundancies and incompleteness seem to exist in the current NRC/DOT regulations; and, third, the role of the states in ensuring the safe transport of wastes within their territories needs to be addressed further.

The Report emphasized that the focus of regulation is on an NRC's licensee's role in supervising the transportation of nuclear materials but pointed out that this focus may be misdirected by observing:

> While carriers and drivers are subject to some direct regulation by the agencies, it is the licensee who bears the heaviest burden in vouching for safe transport. While HM-164 and the NRC sabotage regulations do give some attention to truck and driver safety and conditions on the open road, the focus of the former is <u>relief</u> from state and local requirement, while the focus of the latter is espionage and sabotage not conventional (and more likely) accident safety for the highway-using public and surrounding communities. The current regulatory framework for radioactive waste and spent fuel can be analogized to air traffic control, where air freight <u>customers</u>, not air traffic controllers, have been made primarily responsible for the safe air transport of hazardous materials. As "traffic" increases, such a situation will not likely be allowed to continue. (Report, p. 127)

The panel also concluded that the regulatory framework places maximum emphasis on cask integrity but that additional protection through special regulatory requirements applicable to transportation modes and routes appeared appropriate.

> In sum, the panel majority found that an underdeveloped regulatory framework currently exists for the transportation of spent fuel and high-level wastes. The federal governmental agencies involved defer to each other, with

primary responsibility essentially delegated to NRC's reactor licensees.

The Report's comments on the present regulatory framework conclude that:

> To prevent future accidents as the frequency of shipment grows and to forestall the adoption of a hastily conceived and costly federal regulatory regime in the wake of accidents, reform of the federal regulatory structure, within the ample statutory authority for reasonable regulatory requirements that already exists, may be required. Thus, the panel recommends a careful evaluation of existing federal regulation of highway transport to assure that (a) a sufficiently broad and uniform regulatory regime exists for the safe transport of radioactive wastes, (b) any redundancies and incompleteness in the existing NRC-DOT regulations have been eliminated, and (c) the needs of states to control safety on their highways are met.

The Illinois Attorney General submits that this conclusion is warranted and supported by the practice under the present framework. The U.S. Department of Transportation has repeatedly entered inconsistency rulings in relation to state regulatory efforts to enhance the safety of shipments through the respective states. Implementation of the proposed rule would provide an arena for the expression of local concern that does not presently exist.

Illinois has taken measures to develop emergency preparedness but more needs to be done through advance planning, commentary, and design so that both federal and state officials are not forced to react in ad hoc fashion to perceived hazards. The rule proposed by Wisconsin will significantly enhance public

and environmental safety through advance consideration, deliberation, public discussion, and forward planning needed to insure the safety of the environment and potentially-affected citizens. Adoption of the proposed rule will contribute to a closing of the regulatory gap.

III.

THE NEED FOR PUBLIC INPUT

The Wisconsin petition addresses a glaring inadequacy in the current regulatory scheme. This is the absence of public comment and participation. In the end, it is the individual citizen and the integrity of the environment that stand to lose the most from an ill-conceived or inadequate safety component in a regulatory scheme. The proposed rule will allow for public input by concerned and affected individuals and groups. These citizens and groups often have a unique awareness of hazards endemic to the transportation of nuclear waste through the geographical areas that they live, work, and play in. They should be heard as well as state and local governmental officials. The public forum contemplated by the Wisconsin petition would do much to promote public confidence in the regulators and minimize physical, health, and environmental hazards, to say nothing of the substantial psychological stress imposed on citizens living near transportation corridors and a much-too-prevalent mistrust of government "secrecy."

CONCLUSION

For all of the above reasons, the Attorney General of the State of Illinois would urge the Commission to adopt the proposed rule.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General
State of Illinois

By: _____
Assistant Illinois Attorney General
160 North LaSalle Street, Room 900
Chicago, IL 60601 (312) 793-2512

Edmund B. Moran, Jr.
Assistant Attorney General
160 North LaSalle Street, Room 900
Chicago, Illinois 60601
312/793-2512

STATE OF ILLINOIS

OFFICE OF THE GOVERNOR

SPRINGFIELD 62706

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

JAMES R THOMPSON
GOVERNOR

September 23, 1983

Dr. Nunzio Palladino, Chairman
U. S. Nuclear Regulatory Commission
1717 H Street N.W.
Washington, D.C.

Dear Chairman Palladino:

We are writing you in regard to large numbers of spent nuclear reactor fuel shipments that are scheduled to take place in Illinois in the coming months. All of these shipments will be traversing Illinois via highway or railway, many in close proximity to the highly populated Chicago area. As we are sure you are aware, these shipments are a matter of concern to citizens and officials of Illinois.

We are aware of the extensive regulations by the U. S. Nuclear Regulatory Commission regarding the design and testing of the shipping casks and the provisions regarding safety during transport. However, we feel that such a large number of shipments in a relatively short time frame dictates additional precautions. We have already experienced at least one shipment in which an empty cask was returned to the General Electric Morris Facility contaminated with radioactivity in excess of United States Department of Transportation limits. Further, as your own regulations and the Department of Transportation's regulations recognize, (see 10CFR 0.73 etc.) there is the risk of radiological sabotage or theft of special nuclear material. Additionally, the level of emergency response capability by the Nuclear Regulatory Commission in the event of a release, whether caused by accident or sabotage, appears inadequate.

The Illinois Department of Nuclear Safety and the Illinois Department of Law Enforcement have been ordered to inspect shipments of spent fuel originating in Illinois and to escort all such shipments transversing Illinois, irrespective of origin. The large number of shipments that originate, pass through or terminate in Illinois during the next twelve months will place heavy demands on our ability to continue inspecting and escorting the shipments. Yet, we believe such actions are necessary to assure the public safety.

EXHIBIT A

Since the U. S. NRC has the prime authority and responsibility for regulation of such shipments, we are requesting that you implement the following additional precautions:

1. Perform thorough inspections of all shippers, carriers, and receivers involved in these shipments to ensure that they have adequate written procedures, equipment, and trained personnel to properly handle such a large number of shipments.

2. Perform pre-transport inspections of all spent fuel or empty cask shipments scheduled to originate, pass through or terminate in Illinois.

3. Require armed security escort of shipments at all times during transit through Illinois.

4. Assure emergency response capability which can be delivered to local jurisdictions through which these shipments will go.

Your cooperation in considering and implementing these additional precautions would be deeply appreciated. A response at your convenience, if at all possible within the next two weeks, would be appreciated.

Sincerely,

James R. Thompson
Governor
State of Illinois

Neil F. Hartigan
Attorney General
State of Illinois

83rd GENERAL ASSEMBLY
State of Illinois
1983 and 1984

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Introduced April 13, 1984, By Representatives Churchill, Daniels, Hoffman, Ewing, Vinson, Davis, Pullen, Hallock and D. P. Friedrich

SYNOPSIS
(Ch. 111 1/2, pars. 4304 and 4305; new par. 4310)

Amends the Illinois Nuclear Safety Preparedness Act. Increases fees for operators of nuclear power and storage facilities. Authorizes reimbursement to the Illinois Emergency Services and Disaster Agency, as well as local governments, for expenses incurred with respect to nuclear safety plans. Authorizes the Department of Nuclear Safety to accept grants, gifts and loans from both public and private sources in administering said Act. Effective immediately.

LRB8308722JSjw

Fiscal Note Act
may be applicable

A BILL FOR

EXHIBIT B

AN ACT to amend Sections 4 and 5 of the "Illinois Nuclear Safety Preparedness Act", approved September 14, 1979, as amended, and to add Section 10 thereto.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 4 and 5 of the "Illinois Nuclear Safety Preparedness Act", approved September 14, 1979, as amended, are amended, and Section 10 is added thereto, the amended and added Sections to read as follows:

(Ch. 111 1/2, par. 4304)

Sec. 4. Persons engaged within this State in the business of producing electricity utilizing nuclear energy or operating facilities for storing spent nuclear reactor fuel for others shall pay fees to cover the cost of establishing plans and programs to deal with the possibility of nuclear accidents. The fees shall be used exclusively to fund those Departmental and other ~~local~~ government activities defined as necessary by the Director to implement and maintain the plans and programs authorized by this Act. The Illinois Emergency Services and Disaster Agency and local governments incurring expenses attributable to implementation and maintenance of the plans and programs authorized by this Act may apply to the Department for reimbursement of those expenses.~~, and~~ Upon approval by the Director of such claims ~~submitted by local governments~~, the Department shall reimburse such agency and local governments from fees collected pursuant to this Section, except that such reimbursements shall not exceed $350,000 for such Agency, nor $150,000, in the aggregate, for local governments ~~shall not exceed $100,000~~ in any year. Such fees shall consist of the following:

(1) A one-time charge of $590,000 per nuclear power station in this State to be paid by the owners of such stations;

(2) An additional charge of $240,000 per nuclear power station for which a fee under subparagraph (1) was paid before June 30, ~~the effective date of this amendatory Act of~~ 1982;

(3) Through June 30, 1982, an annual fee of $75,000 per year for each nuclear power reactor for which an operating license has been issued by the NRC, and after June 30, 1982, and through June 30, 1984 an annual fee of $180,000 per year for each nuclear power reactor for which an operating license has been issued by the NRC, and after June 30, 1984, an annual fee of $400,000 for each nuclear power reactor for which an operating license has been issued by the NRC, to be paid by the owners of nuclear power reactors operating in this State;

(4) A capital expenditure surcharge of $1,400,000 per nuclear power station in this State, whether operating or under construction, shall be paid by the owners of such station.

(5) ~~(4)~~ An annual fee of $25,000 per year for each site for which a valid operating license has been issued by NRC for the operation of an away-from-reactor spent fuel storage facility, to be paid by the owners of facilities for the storage of spent nuclear fuel for others in this State; and

(6) ~~(5)~~ A fee assessed at the rate of $1,000 per cask for truck shipments and $2,000 per cask for rail shipments of spent nuclear fuel received at or departing from any nuclear power station or away-from-reactor spent fuel storage facility in this State ~~a facility referred to in subparagraph (4) of this Section 4~~ to be paid by the owners of such facilities.

(7) A fee assessed at the rate of $1,000 per cask for shipments of spent nuclear fuel transversing the State to be paid by the owner of such shipments.

(Ch. 111 1/2, par. 4305)

Sec. 5. Within 30 days after the beginning of each State

fiscal year, each person who possessed a valid operating license issued by the NRC for a nuclear power reactor or a spent fuel storage facility during any portion of the previous fiscal year shall pay to the Department the fees imposed by Section 4 of this Act. The one-time facility charge assessed pursuant to subparagraph (1) of Section 4 shall be paid to the Department not less than 2 years prior to scheduled commencement of commercial operation. The additional facility charge assessed pursuant to subparagraph (2) of Section 4 shall be paid to the Department within 90 days of June 30, 1982 ~~the effective date of this amendatory Act of 1982~~. Fees assessed pursuant to subparagraph (4) of Section 4 shall be paid in six payments, the first, in the amount of $400,000, shall be due and payable 30 days after the effective date of this Amendatory Act of 1984. Subsequent payments shall be in the amount of $200,000 each, and shall be due and payable annually on August 1, 1985 through August 1, 1989, inclusive. Fees assessed under the provisions of subparagraphs (6) and (7) ~~subparagraph (5)~~ of Section 4 of this Act shall be paid to the Department prior to the movement ~~receipt~~ of such shipments within this State.

(Ch. 111 1/2, new par. 4310)

Sec. 10. The Department may accept and administer according to law, loans, grants, or other funds or gifts from the Federal Government and from other sources, public and private, for carrying out its functions under this Act.

Section 2. This Act takes effect upon becoming a law.

DOCKET NUMBER
PETITION RULE PRM 71-10 (19)
(50 FR 4866)

Northern States Power Company

414 Nicollet Mall
Minneapolis, Minnesota 55401
Telephone (612) 330-5500

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 4, 1985

Secretary of the Commission
U S Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Section

This letter is Northern States Power Company's (NSP) comments on the State of Wisconsin's Petition for Rulemaking (Docket No. PRM-71-10) dated December 13, 1984.

The Wisconsin petition should be denied. It would provide no additional safety benefits to the public over existing spent fuel shipment regulation. On the other hand, it:

1. Could unduly burden a utility attempting to ship spent fuel.

2. Creates a redundant and confusing regulatory scheme, ignoring the comprehensive system of federal regulation that already exists to govern spent fuel transportation.

3. Is inconsistent with the memorandum of understanding that describes the roles of the Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) in regulating radioactive material transportation.

4. Creates an unwarranted prejudice against spent fuel shipments while requiring no similar action to regulate the transportation of other hazardous materials, which can be more dangerous, do not have nearly as outstanding a transportation safety record and are much more widely shipped.

5. Ignores the vast amount of research on spent fuel transportation already completed.

6. Could have severe economic repercussions on a utility and its customers.

Furthermore, Wisconsin's real intent in this rulemaking proposal may be best gauged by its recent actions to unilaterally halt further shipments of radioactive materials until the shippers meet Wisconsin's imposed safety standards. On January 2, 1985, the state Department of

DS11 add: S. Wigginton, 4000 MHBB
James J. Henry, 1130 SS
Frank Young, AR-5037

Acknowledged by card APR 8 1985

Natural Resources issued an administrative order to NSP seeking a halt of planned spent fuel rail shipments until NSP complied with a detailed order (attached). The order would affect the rail shipment operations and require emergency response planning for accidents which are practically, if not physically, impossible. In March 1985, the DNR issued a similar order to Northeast Nuclear Energy Company (NNECO) seeking a halt to a planned NNECO shipment of "intermediate-level" radioactive materials (attached). Both NSP and NNECO have sought state administrative review of these orders.

Additionally, Wisconsin sought temporary injunctive relief in state court against any further NSP shipments. The state lost its motion for a temporary injunction. A decision is pending from the Wisconsin Circuit Court on the legal issues concerning the order.

These state administrative orders and the ensuing litigation are clear implications that Wisconsin does not seek responsible regulation of the hazards connected with spent fuel shipments. On the contrary, Wisconsin seeks either an outright ban upon such shipments, or to impose so many administrative barriers to shipments that shippers will either abandon their plans or route the shipments around the state.

Nuclear fuel cycle materials have been transported on a national basis for more than 30 years with an unsurpassed safety record; more than 5,000 commercial spent fuel assemblies have been shipped in this country without a single accident resulting in any release of radioactive materials. This excellent safety record is not mere happenstance. It is the result of broad and intensive regulation of spent fuel shipments by the federal government.

A vast amount of literature confirms not only the safety of spent fuel transportation, but the adequacy of the present regulatory scheme. Over the past 18 years there have been more than 800 scientific and technical papers examining radioactive material transportation. Drs. J.C. Courtney and E.N. Lambremont of Louisiana State University examined 190 of those technical papers and conclude that "the risk to the general public from the transportation of radioactive materials is extremely low. The extensive amount of work which supports this conclusion reflects a remarkable international consensus." (Safety Issues in the Transportation of Radioactive Materials: A review of the Recent Scientific and Technical Literature, Dr. J.C. Courtney and Dr. E.N. Lambremont, February 1984).

The study goes on to address spent fuel shipments specifically: "There is virtually no opportunity for a significant release of radioactive material during their transport from power plant sites." This assumes that spent fuel is shipped as prescribed by the present federal regulations. Additionally, Courtney and Lambremont state that even under extreme accident conditions in densely populated areas it is virtually impossible to expose large numbers of people to unacceptable levels of radiation. No other hazardous material has received the attention, analysis and degree of protection that spent fuel has.

The petitioner provides no evidence that existing regulations are deficient. Rather, the state offers vague statements meant to question the safety and regulatory adequacy of spent fuel shipments. These statements clearly indicate that the petitioner neither adequately understands the regulatory scheme, nor has it sincerely sought scientific opinions on the safety of spent fuel transportation.

Wisconsin's proposed rule would create a redundant and confusing regulatory scheme. It would require a shipper to fulfill the requirements of 10 CFR 73, comply with all DOT safety and routing regulations and insure that the cask is capable of withstanding accidents along the route. Such a rule is pointless; federal agencies currently have ways of assuring licensee compliance without additional requirements.

A rule that requires a shipper to "demonstrate" that a cask can withstand "all reasonably foreseeable incidents" also is unnecessary and, more important, would require repeated demonstrations of what federal regulation already has accomplished. The NRC establishes the technical requirements for casks, detailing what type of accidents casks must withstand. It then licenses casks according to these specifications. A shipper would have to repeat not only the licensing of a cask for each shipment but also repeat the scientific research used to establish current regulatory requirements. Such a rule would cost consumers millions of dollars and accomplish nothing.

Petitioner's proposed rule also is inconsistent with the 1979 NRC-DOT joint memorandum of understanding on responsibility for regulating the transportation of radioactive material. Wisconsin proposes that the NRC enforce "all applicable DOT safety and routing regulations." This would result in one of two situations, each of which is ridiculous on its face: 1) two agencies duplicating enforcement of a single agency's regulations; 2) one agency (NRC) enforcing another's regulations. The latter situation would be, of course, unprecedented in federal regulatory history and hardly represents a healthy trend in administrative law. Presumably such a regulation would also be in violation of the Hazardous Materials Transportation Act and DOT regulations developed under that act, since Congress in this law vests responsibility for regulation of all hazardous (non-nuclear) materials in the DOT.

The proposed rule also would require a showing that the shipment presents a radiological exposure less than the alternative of not shipping. Such a requirement is absurd and unnecessary. Federal environmental impact statements have concluded that the current regulatory regime for nuclear shipments assures there will be no significant risk to the public. Moreover, the November 1984 NRC denial of the rulemaking petition of Critical Mass Energy Project found that additional rules for emergency response planning are unnecessary in light of the low risks arising from shipments.

The petitioner alleges the states lack "any meaningful input" into shipment decisions. Such is not the case. Federal regulations allow states to seek additional requirements on shipments to assure greater

protection to the public. However, such requirements must not unduly burden commerce and must not interfere with the federal scheme of uniform regulation of hazardous materials transportation. The real problem is that the petitioner does not seek to regulate transportation, but rather to block the shipments entirely, albeit through the means of administrative requirements.

Clearly, the State of Wisconsin is either unfamiliar with or has totally ignored regulations governing the transportation of spent fuel. As indicated above, numerous studies have examined such shipments, the federal government has created a regulatory scheme to protect the public's health and safety and, most important, spent fuel currently is safely shipped. The petitioner's proposed rules add nothing to safety and should be rejected.

David Musolf
Manager - Nuclear Support Services

cc: Regional Administrator - III
NRR Project Manager, NRC
Resident Inspectors, NRC
G Charnoff
Director NRR
L. Trosten
T. Zaremba
J. Bizzano

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Preparation by the Northern States Power Company of Minnesota of a Spill Prevention and Mitigation Plan for the Shipment of Spent Nuclear Reactor Fuel through the State of Wisconsin by Rail	)	SPECIAL ORDER #2A-84-1246

FINDINGS OF FACT

1. Northern States Power Company of Minnesota owns and operates the Monticello Nuclear Generating Plant in Minnesota.

2. Northern States Power Company of Minnesota proposes to ship 1,058 spent fuel assemblies, which are currently in storage at the Monticello Nuclear Generating Plant, to a General Electric Company storage facility in Morris, Illinois by rail. Two shipments of spent fuel assemblies (36 assemblies in each shipment) have been made as of the date of this Order.

3. Northern States Power Company of Minnesota has shipped, and proposes to continue to ship, the spent fuel assemblies on a Burlington Northern rail line which runs from Prescott, Minnesota to East Dubuque, Illinois, through the State of Wisconsin along the Mississippi River.

4. Northern States Power Company of Minnesota has submitted to the Department of Natural Resources a document entitled "Spent Nuclear Fuel Shipment Emergency Plan and Emergency Plan Implementing Procedures", dated October 1, 1984, and two letters (dated November 29, 1984 and December 5, 1984). The Department of Natural Resources has found these submittals to be inadequate in that there is no satisfactory comprehensive description of how a radiological release resulting from an incident would be effectively contained and cleaned up, nor has Northern States Power Company indicated how it would incorporate a spill prevention and mitigation plan into its overall emergency procedures for the campaign.

CONCLUSIONS OF LAW

1. The spent fuel assemblies described in Finding of Fact #2 are a "hazardous substance" within the meaning of that phrase as defined in section 144.01(4m), Wisconsin Statutes.

2. The Department of Natural Resources has the authority under section 144.76(4), Wisconsin Statutes (as amended by 1983 Wisconsin Act 27) to issue orders requiring that preventive measures be taken by any person possessing or having control over a hazardous substance if the Department finds that existing control measures are inadequate.

3. The order contained herein is enforceable under sections 144.98 and 144.99, Wisconsin Statutes.

ORDER

Pursuant to section 144.76(4), Wisconsin Statutes, Northern States Power Company of Minnesota is hereby ordered to:

1. Prepare a spill prevention and mitigation plan, prior to further shipments, which contains the following:

   A. An adequate training program shall be developed for all personnel involved in the shipment of the spent fuel.

      1. Records shall be maintained on the personnel who have successfully completed the training program in their responsibility area as outlined in the plan.
      2. Periodic training shall be conducted to maintain an adequate level of performance.

   B. Preparedness actions which would assist in prevention or mitigation shall be developed.

      1. Equipment and methods used to transport spent fuel shall be designed to minimize emergencies:

         a. Rail cars shall undergo testing at least once a year and an inspection of the car shall be made prior to each shipment. Inspection and testing shall be documented.
         b. All shipments shall be discontinued if a ten-year floodstage along the designated route is reached. All tracks, bridges and causeways shall be inspected after a ten-year floodstage before the next shipment.
         c. All oncoming rail traffic shall be stopped or side-tracked during a passing shipment or in the alternative document that the net result of sidetracking or stopping oncoming traffic would compromise safety or impede interstate commerce.
         d. All rail crossings (of roads and other railroads) shall be controlled either mechanically or manually.
         e. The casks shall be inspected for integrity prior to each shipment and upon completion of shipment.
         f. Casks shall be properly placarded and labeled in accordance with Title 49 Code of Federal Regulations Subchapter C.

      2. Security measures dealing with natural or human intervention shall be fully detailed in conformance with the current interim regulations: Title 10 Code of Federal Regulations, section 73.37.

      3. Identify contractors and resources (equipment, personnel, etc.), their locations and estimated response time for all classifications of incidents.

4. Emergency coordinator roles shall be explained.

   a. A primary emergency coordinator shall be designated.
   b. An alternate emergency coordinator shall be designated.

C. Implementation of the prevention and mitigation plan shall address the following specific issues:

1. Detailed procedures for incidents involving an accident with fire, an accident with a total release of cask contents to surface waters and an accident with no release to either surface waters or to the air share fully and completely detail:

   a) Site security during an incident.
   b) Emergency response procedures.
   c) Containment and control procedures
   d) Recovery procedures for a derailment involving a total release of cask contents to surface waters and wetlands; car and cask immersed in surface waters with no release of cask contents; car and cask derailed in adjacent wetlands with no release of cask contents; a derailment on upland with no loss of cask contents; and an incident on uplands involving a total loss of cask contents due to a fire.
   e) Clean-up of the site and mitigation of any subsequent adverse impacts including:

      1) How and where will the contaminated material be temporarily stored?
      2) How and where will the contaminated material be permanently stored?
      3) How will the site be restored and how will any adverse impacts be mitigated?

2. An emergency equipment inventory which is responsive to the above three scenarios shall be compiled, and updated yearly, to include:

   a. Types of recovery, clean-up and containment equipment.
   b. When and where will the equipment be stored and what is the ownership of the equipment.
   c. The capabilities of all equipment.
   d. The date of last service and condition of equipment.
   e. The availability of qualified operators shall be indicated.

2. Cease the shipping of additional spent fuel assemblies from the Monticello Nuclear Generating Plant until a spill prevention and mitigation plan, which meets the requirements in paragraph 1 of this Order, is submitted to, and is approved by, the Department of Natural Resources.

NOTICE OF ADMINISTRATIVE REVIEW RIGHT

This Order shall be effective 10 days after it is served unless Northern States Power Company of Minnesota requests a hearing within that 10-day period, by serving a petition for hearing on the Secretary of the Department of Natural Resources. If a hearing is requested, this Order shall not become effective until after the hearing is concluded and the hearing examiner has issued a decision affirming this Order. This notice is provided pursuant to section 227.11(2), Wisconsin Statutes.

Dated at Madison, Wisconsin, this 2nd day of January, 1985.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
FOR THE SECRETARY

George E. Meyer

George E. Meyer, Administrator
Division of Enforcement

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Law Department
FEB 25 1985

RECEIVED
FEB 10 1985
SENIOR VICE PRESIDENT
Nuclear Engineering & Operations

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Preparation by the Northeast Nuclear Energy Company of Connecticut and the Burlington Northern Railroad of Spill Prevention and Mitigation Plans for the Shipment of Low-Level Radioactive Waste through the State of Wisconsin by Rail	SPECIAL ORDER #2A-85-1252

FINDINGS OF FACT

1. Northeast Nuclear Energy Company of Connecticut (NNECO), a subsidiary of Northeast Utilities, owns and operates the Millstone Nuclear Power Station, Units 1 and 2, in Connecticut.

2. Northeast Nuclear Energy Company of Connecticut proposes to ship low-level (intermediate) radioactive waste from the Millstone Nuclear Power Station in Connecticut to a disposal facility in Handford, Washington by rail.

3. Northeast Nuclear Energy Company of Connecticut has shipped, and proposes to continue to ship, the radioactive waste on a rail line owned by the Burlington Northern Railroad, which runs from East Dubuque, Illinois through Wisconsin, along the Mississippi River, to Prescott, Wisconsin.

4. Representatives of Northeast Nuclear Energy Company of Connecticut (NNECO) have met with Department of Natural Resources' personnel to discuss the measures which have been taken by NNECO and Burlington Northern to prevent accidents during the shipment of the radioactive waste and the contingency plans which have been developed to prevent, or contain and clean-up, discharges of radioactive waste into the environment in the event of an accident.

5. The Department finds that NNECO's and Burlington Northern's existing control measures (their Quality Assurance / Quality Control procedures and the "Voluntary Assistance Agreement by and Among Electric Utilities Involved in the Transportation of Nuclear Waste," developed by the Institute of Nuclear Power Operations and signed by fifty-one utilities including Northeast Utilities) are inadequate to prevent or minimize the harmful effects from the discharge of radioactive waste should an accident occur.

CONCLUSIONS OF LAW

1. The low-level (intermediate) radioactive waste described in Finding of Fact #2 is a "hazardous substance" within the meaning of that phrase as defined in section 144.01(4m), Wisconsin Statutes.

2. The Department of Natural Resources has the authority under section 144.76(4), Wisconsin Statutes, to issue orders requiring that preventive measures be taken by any person possessing or having control over a hazardous substance if the Department finds that existing control measures are inadequate to prevent discharges.

3. The Order contained herein is enforceable under sections 144.98 and 144.99, Wisconsin Statutes.

ORDER

Pursuant to section 144.76(4), Wisconsin Statutes, the Northeast Nuclear Energy Company of Connecticut and the Burlington Northern Railroad are hereby ordered to:

1. Prepare spill prevention and mitigation plans, prior to further shipments, which compile with the following minimum requirements:

   A. Equipment used to transport radioactive waste shall be designed and tested to minimize the possibility of an accident and a discharge of radioactive waste:

      1. Rail cars shall undergo testing at least once a year and an inspection of the car shall be made prior to each shipment. Inspection and testing shall be documented.

      2. Casks shall be inspected for integrity prior to each shipment and upon completion of the shipment.

   B. Casks shall be properly placarded and labeled in accordance with Title 49, Code of Federal Regulations, Subchapter C.

   C. All radioactive waste shipments shall be discontinued if a ten-year recurrence interval floodstage is reached along the designated route. All tracks, bridges and causeways shall be inspected after a ten-year floodstage before the next shipment.

   D. Detailed procedures shall be developed for incidents involving: an accident with a fire; an accident involving partial or total submersion of a cask in water; and a derailment on uplands. The procedures shall include:

      1. Site security during an incident.

      2. Emergency response procedures.

      3. Recovery procedures for a derailment involving car and cask immersed in surface waters; car and cask derailed in a wetland; and derailment on upland.

4. Clean-up of the site and mitigation of any subsequent adverse environmental impacts.

5. A list of available contractors, their resources (equipment, personnel, etc.) their locations, and estimated response times.

E. An emergency equipment inventory shall be compiled and updated yearly, which includes all equipment necessary to respond to the three types of accidents specified in paragraph D, above, and which lists the following information:

1. Types of recovery and clean-up equipment available.

2. When and where the equipment will be stored and the equipment's ownership.

3. The capabilities of the equipment.

4. The date of last service and the condition of the equipment.

5. The availability of qualified operators.

2. Northeast Nuclear Energy Company of Connecticut and Burlington Northern Railroad shall cease the shipment of additional low-level (intermediate) radioactive waste from the Millstone Nuclear Power Station through Wisconsin until spill prevention and mitigation plans, which meet the requirements of paragraph 1 of this Order, are submitted to, and are approved by, the Department of Natural Resources.

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

This Order shall be effective 10 days after it is served unless Northeast Nuclear Energy Company of Connecticut or Burlington Northern Railroad requests a hearing within that 10-day period, by serving a petition for hearing on the Secretary of the Department of Natural Resources. If a hearing is requested, this Order shall not become effective until after the hearing is concluded and the hearing examiner has issued a decision affirming or modifying this Order. This notice is provided pursuant to section 227.11(2), Wisconsin Statutes.

Dated at Madison, Wisconsin, this 15th day of February, 1985.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

FOR THE SECRETARY

George E. Meyer

George E. Meyer, Administrator
Division of Enforcement

39741

DOCKET NUMBER
PETITION RULE PRM-71-10 (20)
(50 FR 4866)

STATE OF COLORADO

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471

'85 APR -5 A10:12

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Richard D. Lamm
Governor

April 3, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing & Service Branch

To the Secretary of the Commission:

The State of Colorado wishes to make the following comments on Docket No. PRM-71-10 regarding the State of Wisconsin's filing of petition of rulemaking for spent nuclear fuel shipments.

The State of Colorado shares the State of Wisconsin's concerns for the adequacy of consideration given to transportation impacts resulting from spent nuclear fuel shipments. While the transportation of all radioactive materials has had an enviable safety record, it would be foolhardy to become complacent and ignore the potential impacts that could result from a serious transportation accident involving spent nuclear fuel. Therefore, every step of the transportation process, from the decision to ship, to the shipping mode, to the choice of route must be carefully assessed.

In order to safeguard the public and the environment, it is necessary to assess firstly, whether shipment of a load of spent nuclear fuel is actually in the best interests of the public health and safety. If such a shipment is necessary, the safest mode of transportation and safest route must then be determined. Historically, adequate consideration of all of these factors has been lacking. To remedy this situation, the State of Wisconsin has proposed amendments to 10 CFR Part 71 requiring advance approval for transportation of spent nuclear fuel.

The State of Colorado strongly concurs with these proposed amendments. Colorado does believe some revisions would improve these requirements. Colorado suggests that the amendments allow for an application and approval/denial for a series of shipments from one point of origin to one destination. The provision regarding Environmental Impact Statements and Environmental Assessments should clarify when such Statements or Assessments are and are not necessary.

DS11 add:
S. Wigginton, 4000 MNBB
James J. Henry, 1130SS
Frank Young, AR-5027

APR 8 1985
Acknowledged by card.....

The State of Colorado urges the Nuclear Regulatory Commission to adopt the proposed amendments to 10 CFR 71, as modified by the suggestions above. It is absolutely essential that decisions involving the shipment of spent nuclear fuel be made with a full understanding of the impacts involved and after consultation with the affected states.

Sincerely,

Richard D. Lamm
Governor

DOCKET NUMBER
PETITION RULE PRM 71-10 (21)
(50 FR 4866)

MIDDLE SOUTH SERVICES, INC./BOX 61000/NEW ORLEANS, LA. 70161/(504) 529-5262

FELIX M. KILLAR, JR.
MANAGER, NUCLEAR FUEL SUPPLY

'85 APR -5 A10:10
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 4, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

ATTN: Docketing and Service Branch

These comments are provided by Middle South Services, Inc. ("Middle South") on behalf of Arkansas Power & Light Company, Louisiana Power & Light Company, and Mississippi Power & Light Company, in regard to the petition for rule-making (Docket No. PRM-71-10, 50 Federal Register 4866, February 4, 1985) by the State of Wisconsin. Middle South is in general agreement with and supports the comments filed by the Electric Utilities Companies' Nuclear Transportation Group.

The petitioner has not identified a need for adoption of the proposed rule, and the petition contains no new data or information which would point out inadequacies in the current regulatory basis. Middle South believes that the current transport regulations of the Commission and the corresponding regulations of the U.S. Department of Transportation provide significantly more than adequate assurances of the public health and safety.

If there are any questions regarding these comments, please do not hesitate to contact me.

Sincerely,

T. P. Snell
for FMK, Jr.

File: 041-01
047-26

cc: Mr. J. F. Fager
Mr. L. L. Kittrell
Dr. T. W. Schnatz
NED/QA Managers
Nuclear Fuel Subcommittee

DS11 add:
S. Wigginton, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037

APR 8 1985
Acknowledged by card.....

DOCKET NUMBER
PETITION RULE PRM 71-10 (22)
(50 FR 4866)

DOCKETED
USNRC
APR 5 1985
Office of the Secretary
Docketing & Service
Branch

TUES, MORN 4/2/85
BREEZY CLOUDY 33°F

Howdy Commissioners

I rite to urge adoption of the State of Wisc. petition to control and oversea trans of nuc & radioactive material - & provides a means of citizen input it seems that because U S citizens both can benefit & suffer from the nuc industry & the transport of its material, there should be a vehicle be which their opinion can have affect - the nuclear indus. isn't being singled out by me as an industry closed to citizen input - but the same chance of input & influence should be true for any econ activitity affecting the econ & physical health of citizens & the Land as which Life is based - such vehicles of input would go far to remove blame for environmental degradation from industry & force the citizens to pay attention to what we ask the industries to do & how it is done - we ask for responsibility - now we can only sit & grumble & blame others for the results of our apathy

IN APPRECIATION
OTIS

Michael J. Riegert (OTIS)
N 342 ORIOLE DR
Stetsonville, Wis. 54480

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Original could not be reproduced.

DS11 add:
S. Wigginton, 4000 MNBB
James J. Hengy, 1130 SS
Frank Young, AR-5037

Acknowledged by card. 4/8/85

DOCKET NUMBER
PETITION RULE PRM 71-10 (23)
(50 FR 4866)

LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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'85 APR -5 P4:58
DOCKETING & SERVICE BRANCH

April 5, 1985

Hand Delivery

Mr. Samuel J. Chilk
Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Wisconsin Petition For Rulemaking
Docket No. PRM-71-10

Dear Mr. Chilk:

Enclosed herewith please find a signed original of the comments prepared by the Electric Utility Companies' Nuclear Transportation Group on the above-referenced petition for rulemaking.

Sincerely,

Leonard M. Trosten

Leonard M. Trosten
Attorney for the Nuclear
Transportation Group

DS11 add:
S. Wigginton, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037

Acknowledged by card. 4/8/85 pr

Comments on Docket No. PRM-71-10:
Wisconsin Petition for Rulemaking
50 Fed. Reg. 4866 (Feb. 4, 1985)

'85 APR -5 P4:58

Introduction

These comments on the Petition for Rulemaking, filed on December 17, 1984 by the State of Wisconsin ("Wisconsin Petition") pursuant to 5 U.S.C. § 553 (1982) and 10 C.F.R. § 2.802 (1984), are submitted to the Nuclear Regulatory Commission ("Commission" or "NRC") on behalf of the Electric Utility Companies' Nuclear Transportation Group ("Group"). The Group consists of 37 investor-owned and publicly-owned electric utilities responsible for the construction or operation of 99 nuclear power reactors.[1/] The Group is vitally interested in

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1/ The members are Alabama Power Company, Arizona Public Service Company, Baltimore Gas & Electric Company, Boston Edison Company, Carolina Power & Light Company, Commonwealth Edison Company, Consolidated Edison Company of New York, Inc., Duke Power Company, Duquesne Light Company, Florida Power & Light Company, Georgia Power & Light Company, Gulf States Utilities Company, Houston Lighting & Power Company, Indiana & Michigan Electric Company, Kansas City Power and Light Company, Kansas Gas and Electric Company, Middle South Services, Inc., Nebraska Public Power District, New York Power Authority, Niagara Mohawk Power Corporation, Northeast Utilities, Northern States Power Company, Pacific Gas & Electric Company, Pennsylvania Power & Light Company, Philadelphia Electric Company, Public Service Company of Colorado, Public Service Electric & Gas Company, Rochester Gas and Electric Corporation, Sacramento Municipal Utility District, South Carolina Electric & Gas Company, Southern California Edison Company, Texas Utilities Generating Company, Union Electric Company, Virginia Electric & Power Company, Wisconsin Electric Power Company, Wisconsin Public Service Corporation and Yankee Atomic Electric Company. The Edison Electric Institute supports the Group financially and participates in its activities.

the effect of federal, state, and local laws and regulations on the ability of electric utilities to operate nuclear power plants safely, prudently, and economically and to transport in the same manner the fuel cycle materials essential to that operation.

Summary of the Group's Comments

The Wisconsin Petition requests the Commission to require advance NRC approval for the transport of spent fuel. Under the proposal, the licensee would have to apply for NRC approval to transport, and such application would have to be noticed in the Federal Register and could be the subject of a public hearing. Moreover, NRC approval of the application could require preparation of an environmental impact statement.

The Wisconsin Petition rests on the false premise that transportation of spent fuel under the current regulatory framework is so hazardous that it should only be permitted following a specific NRC determination of the need for and the risks of the proposed shipment. The Wisconsin Petition has failed to demonstrate that there is a valid factual or legal basis for the proposed rule. The Commission has already addressed the issues raised by the Wisconsin Petition that are within the NRC's jurisdiction and has recognized the coordinate responsibilities of the U.S. Department of Transportation ("DOT"). The Commission has properly determined that there is

reasonable assurance that the public health and safety and the common defense and security are adequately protected by the Commission's current spent fuel shipment regulations coupled with those of the DOT.

In reaching these judgments, the Commission has fully complied with all applicable statutes, including the National Environmental Policy Act of 1969. The NRC has repeatedly concluded, based on a wealth of data and studies, that shipment of spent fuel under current regulations will not have a significant impact on the environment. The Wisconsin Petition contains no new data that contradicts the NRC's prior determinations.

Accordingly, the Commission should deny the Wisconsin Petition, since the proposed rule would be redundant, unnecessary, and without legal foundation.

Detailed Comments

I. Current Regulatory Framework For Transportation Of Spent Fuel

In order to place the Group's critique of the Wisconsin Petition in context, it is necessary to recapitulate the current NRC regulatory framework governing the transport of spent fuel and the relationship of this framework to that of the DOT's regulations. An understanding of each agency's regulatory structure and the extent to which the two interlock is necessary to appreciate the flaws in, and the inappropriateness of, the Wisconsin Petition.

A. Regulation of Transportation by the NRC

The Atomic Energy Act of 1954, 42 U.S.C. §§ 2011-2284 (1982)("AEA"), as amended, authorizes the NRC to license and regulate the receipt, possession, use and transfer of "byproduct material," "source material," and "special nuclear material." This jurisdiction includes the authority to regulate the packaging, shipment, and carriage of spent fuel.

Pursuant to this authority, the NRC has issued regulations governing the delivery and transfer of spent fuel, 10 C.F.R. Part 70 (1984), the packaging and transportation of spent fuel, id. Part 71, and the physical protection of spent fuel in transit, id. Part 73. These regulations effectively require several NRC approvals, either by general or specific license or by other applicable authorization, prior to the transport of spent fuel. These regulations also provide for full public participation in the development of the NRC's transportation requirements, including hearings as appropriate.

The approvals by general license or other authorization are based on generic determinations regarding the safety of spent fuel transport. For example, the NRC has issued a general license to possess spent fuel for transport. 10 C.F.R. § 70.20a(a). It has also issued a general license to any licensee of the Commission to transport, or to deliver to a carrier for transport, spent fuel in a package for which a NRC

approval has been issued. Id. at § 71.12(a). The authority to transport under this second general license is subject to several requirements including, inter alia, the adoption by the licensee of a quality assurance program specifically approved by the Commission, pursuant to 10 C.F.R. §§ 71.101-137, prior to the use of any package for the shipment of licensed material.

The NRC's approvals by specific license or authorization are based on determinations regarding the safety[2/] and physical protection of spent fuel transport. For example, a licensee must maintain, or arrange for, a physical protection system which shall provide for, inter alia, advance approval by the NRC of the routes used for road and rail shipments of spent fuel, and of any U.S. ports where vessels carrying spent fuel shipments are scheduled to stop. 10 C.F.R. § 73.37(b)(7). The NRC considers those issues within its jurisdiction, including radiological health and safety and safeguards, prior to a grant of these specific approvals.

Moreover, if the shipment is to involve a specific license or license amendment, the Commission must determine the need for an environmental impact statement or an environmental assessment. 49 Fed. Reg. 9351, 9385-86 (March 12, 1984), to be codified at 10 C.F.R. § 51.25. A specific license or license

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2/ As discussed more fully in I.B., infra, NRC shares with DOT safety jurisdiction over spent fuel transportation.

amendment may, in unusual circumstances, be required for an action associated with spent fuel transport. For example, in Duke Power Company (Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), 14 N.R.C. 307 (1981), the Atomic Safety and Licensing Appeal Board authorized a materials license amendment to allow the highway transshipment of 300 spent fuel assemblies between two nuclear power plants for storage at the second plant. The amendment application sought authorization for the storage of the spent fuel and not for its transport per se, which was already authorized by 10 C.F.R. § 71.12. 14 N.R.C. at 309.

It is well settled under general principles of administrative law that the NRC may grant its authorizations for spent fuel shipments by either general or specific license. The former are, in effect, rules. Yet where an administrative agency may proceed by either rulemaking or adjudication, which includes specific licensing, the choice between the two "is one that lies primarily in the informed discretion of the administrative agency." SEC v. Chenery Corp., 332 U.S. 194, 203 (1947), quoted in Nueces County Navigation District No. 1 v. ICC, 674 F.2d 1055, 1065 (5th Cir.), cert. denied, 459 U.S. 1035 (1982).

In sum, the NRC has fully considered the subject of the Wisconsin Petition and has properly concluded that case-by-case examinations of spent fuel shipments are not necessary because

the public health and safety and the common defense and security are adequately protected by the current regulatory framework. This conclusion is supported by a Final Environmental Statement (NUREG-0710, discussed infra) and other studies performed by the NRC.

B. Regulation of Transportation by the DOT

The NRC shares with the DOT the statutory authority to regulate the transport of spent fuel. Certain responsibilities, including the regulation of routing of spent fuel shipments, are exercised by the latter.[3/]

The Hazardous Materials Transportation Act of 1974 ("HMTA"), 49 U.S.C. §§ 1801-1812 (1982), authorizes the DOT to promulgate regulations for the safe transport in commerce of hazardous materials, including spent nuclear fuel. Under the authority of the HMTA, DOT has issued comprehensive regulations applicable to carriers and shippers of spent fuel. These regulations govern such matters as packing, repacking, handling, labeling, marking, placarding, and routing, and the marking, maintenance, reconditioning, repairing, or testing of a package or container to be used in hazardous materials transport.

Pursuant to this authority and after extensive public hearings, the DOT issued in 1981 a final rule governing the

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3/ Commonwealth Edison Co. (Shipment of Irradiated Nuclear Fuel from West Valley, N.Y.), 18 N.R.C. 726, 732-733 (1983).

highway routing of radioactive materials, designated HM-164 and codified at 49 C.F.R. § 177.825 (1984). The rule applies general routing requirements to shippers and carriers of low-level radioactive materials and specific routing requirements for "highway route controlled quantities" of radioactive materials, including spent fuel.

In addition to the HMTA, the Federal Railroad Safety Act of 1970 ("FRSA"), 45 U.S.C. §§ 421-441 (1982), authorizes the DOT to prescribe rules, regulations, orders and standards to govern all aspects of railroad safety. However, the DOT has chosen not to exercise its authority to issue routing regulations relating to railroad shipments.[4/]

The line of demarcation between NRC and DOT jurisdiction and authority to regulate radioactive materials transport is specified in a Memorandum of Understanding between the two agencies. 44 Fed. Reg. 38,690 (1979). Pursuant to the Memorandum of Understanding, each agency enforces through its own rules those regulations of the other agency that are

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4/ See 43 Fed. Reg. 36,492 (1978)(HM-164 Advanced Notice of Proposed Rulemaking)("Only highway routing of radioactive materials will be considered"); 45 Fed. Reg. 7140, 7151-52 (1980)(HM-164 Notice of Proposed Rulemaking); see also Hazardous Materials Transportation Act and National Transportation Safety Board Authorizations: Hearing Before the Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce, 96th Cong., 2d Sess. 14-15 (1980) (prepared statement of Howard J. Dugoff, Administrator, Research and Special Program Administration, Department of Transportation).

relevant to the transport of spent fuel. The NRC, in consultation with the DOT, is responsible for the promulgation of safety standards to govern the design and performance of packages for the transport of highway route controlled quantities of radioactive materials. The NRC also exercises "safeguards" jurisdiction and is thereby responsible for the physical protection of spent fuel in transport. Packaging and physical protection of radioactive materials are addressed in 10 C.F.R. Parts 71 and 73, discussed supra. Those aspects of radioactive materials transport for which the DOT is responsible are addressed in 49 C.F.R. Parts 171 through 177.

II. Determination Of Environmental Effects Of Transportation

The NRC has on several occasions assessed the environmental effects of transportation of spent fuel and other radioactive materials by all modes and has in each instance determined that those effects are small and that NRC's transportation regulations are adequate. In this connection, NRC has also considered the environmental effects of alternatives to the present regulations and methods of transport. Thus the Commission has fulfilled its mandate under the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321-4370 (1982).

For example, the Commission announced in 1975 its intention to re-evaluate the then-existing regulations governing

the air transport and packaging of radioactive materials. 40 Fed. Reg. 23,768 (1975). As part of this rulemaking proceeding, the NRC, pursuant to NEPA and 10 C.F.R. Part 51, prepared a Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes, NUREG-0170 (December 1977). The statement considered alternatives to projected spent fuel shipping practices. The NRC concluded, in part on the basis of NUREG-0170, that its regulations were adequate to protect the public against any unreasonable risk from such transport, and that no changes in the regulations were needed to improve safety. 46 Fed. Reg. 21,619 (1981) (withdrawal of advance notice of rulemaking). The Commission reaffirmed its conclusion on the adequacy of its nuclear transport regulations when it promulgated regulations requiring prenotification of spent fuel shipments. 47 Fed. Reg. 596 (1982). The Commission similarly confirmed the adequacy of its regulations when it denied a petition for rulemaking that sought the promulgation of regulations to amend those currently governing routing, emergency planning, and financial responsibility. 49 Fed. Reg. 44,502 (1984). This petition had raised issues similar to those raised in the Wisconsin Petition. The NRC determined, however, that "each of the issues . . . has been substantively resolved." 49 Fed. Reg. at 44,505. Indeed, the Commission is presently considering a modification of its stringent regulations for the physical

protection of spent fuel in transit. In light of recent studies by the NRC and the Department of Energy ("DOE") which show the risk of sabotage to be much less than previously assumed, proposed amendments to these regulations would relieve licensees of certain "non-essential" safeguards requirements. 49 Fed. Reg. 23,867 (1984).

It is in view of these determinations that the Commission has consistently maintained that a specific spent fuel shipment is not an action significantly affecting the environment which would require an environmental impact statement under Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C)(1982). Commonwealth Edison Co. (Shipment of Irradiated Nuclear Fuel from West Valley, N.Y.), 18 N.R.C. 726, 734 (1983).[5/] The Department of Transportation has also examined the environmental effects of its regulatory activities. For example, the DOT performed an Environmental Assessment of its HM-164 rule, concluding that its routing rule would have no significant impact on the environment.[6/] The validity of this determination has been upheld by the

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5/ See also 49 Fed. Reg. at 9385, to be codified at 10 C.F.R. § 51.22(c)(12) (categorical exclusion for review and approval of transporation routes pursuant to 10 C.F.R. § 73.37).

6/ Final Regulatory Evaluation and Environmental Assessment: HM-164. See Draft Environmental Assessment, 45 Fed. Reg. 7140, 7152 (1980) (summary of draft assessment).

courts.[7/] Accordingly, there is no basis for Wisconsin's proposal that an environmental impact statement may need to be prepared for each approval of a spent fuel shipment.

III. Determination of Need for Spent Fuel Transport

The Wisconsin Petition "requests that the NRC exercise its regulatory authority to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to approval of the shipment and route." Pet. at 1. This request proceeds from two false assumptions. The first is that proposed shipments of spent fuel under the current regulatory framework are so dangerous or environmentally harmful that they should only be permitted in the event of dire need. There is no basis for this assumption.[8/] The second faulty premise is that the NRC possesses the legal authority to determine the "need" for proposed shipments. In fact, the "need" to transport spent fuel

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7/ City of New York v. Department of Transportation, 539 F. Supp. 1237 (S.D.N.Y. 1982), rev'd on other grounds, 715 F.2d 732 (2d Cir. 1983), appeal dismissed and cert. denied, 104 S. Ct. 1403 (1984).

8/ See, e.g., Letter from Herzel H.E. Plaine, General Counsel, Nuclear Regulatory Commission, to Hon. James J. Howard, Chairman, House Committee on Public Works and Transportation (June 15, 1985)(expressing NRC views on H.R. 761 and H.R. 4850, 98th Cong., 2d Sess. (1984)).

has already been determined by Congress. The NRC itself has no authority to make such a determination.[9/]

The thrust of the Wisconsin Petition, with respect to shipment of spent fuel to temporary off-site storage locations as the result of the lack of adequate on-site capacity, is that ". . . no federal agency has considered the need for the shipments . . ." Pet. at 4. As noted earlier, Congress has already addressed this issue. For example, the Nuclear Waste Policy Act of 1982 ("NWPA"), 42 U.S.C. §§ 10101-10226 (1982), requires the Department of Energy to provide not more than 1900 metric tons of interim storage capacity, prior to the establishment of a permanent high-level waste repository, for spent fuel from civilian nuclear power reactors that cannot reasonably provide adequate storage capacity on site. 42 U.S.C. § 10155(a). This capacity is to be made available only upon a determination that the person seeking it "is diligently pursuing licensed alternatives to the use of Federal storage capacity [. . . including, inter alia,] transshipment to another civilian nuclear power reactor owned by such person." Id. at § 10155(b)(1)(B)(iv). See also id. at § 10155(g)(criteria for determining adequacy of available storage capacity). Congress thus expressly acknowledged the possible need for electric

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9/ See Commonwealth Edison Company, 18 N.R.C. at 732 (NRC's role does not include deciding whether DOE needs the Fuel Receiving Facility to conclude the West Valley Demonstration Project).

utilities to transship spent fuel, and Congress required that utilities pursue such an alternative, among others, before becoming eligible to use interim storage capacity to be furnished by DOE.[10/]

The NRC recently promulgated regulations governing the criteria and procedures for determining the adequacy of available spent nuclear fuel storage capacity. 50 Fed. Reg. 5548 (Feb. 11, 1985), to be codified at 10 C.F.R. Part 53. These regulations incorporate the requirement that persons seeking federal interim spent fuel storage capacity first pursue alternatives to the use of such capacity, including the transshipment of waste to the site of another civilian nuclear power reactor within the same utility system. 50 Fed. Reg. at 5565, to be codified at 10 C.F.R. § 53.13(c)(4).

The Commission's comments accompanying these regulations address a proposal that the NRC adopt, in 10 C.F.R. Part 53, a preference for on-site storage alternatives over transshipments. The Commission replied that it "does not have any authority under [the NWPA] to establish priorities for the pursuit of spent fuel storage alternatives in the context of a Part 53 determination." 50 Fed. Reg. at 5557. Indeed, the Commission noted that Congress had rejected a provision of an

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10/ Of course, the NWPA is not the only statute in which Congress has specifically contemplated shipments of spent fuel prior to the operation of a repository. See, e.g., Pub. L. No. 96-295, § 301, 94 Stat. 780, 789-90 (1980)(prenotification to Governors of spent fuel shipments).

earlier bill which would have established priorities for the pursuit of these alternatives. Id.

In view of the need for spent fuel transport as determined by Congress and the general and specific authorizations for such transport granted by the NRC and DOT subject to regulations whose adequacy the NRC has reaffirmed on a number of occasions, any additional specific determinations by NRC as to the "need" to transport would needlessly and unlawfully circumscribe the managerial discretion of the operators of licensed nuclear power plants. Determinations by the NRC of the desirability of spent fuel shipments, which are in compliance with existing radiological health and safety and environmental requirements, would place the Commission in the untenable position of evaluating the judgment of electric utilities in their choice of alternatives and their operating decisions consistent with their obligations to ratepayers and stockholders. This the Commission may not do. "[T]he [NRC] and its adjudicatory boards do not sit to supervise the general business decisions of the public utility industry nor to second-guess the judgment of those who do; that task is entrusted to others." The Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), 7 N.R.C. 752, 757-58 (1978); see Washington Public Power Supply System (WPPSS Nuclear Project No. 1), 19 N.R.C. 1183, 1190-91 (1984) ("It is not our mission to superintend utility management when it makes business judgments for which it is ultimately responsible.").

IV. Critique of Specific Provisions of the Wisconsin Petition

There is quoted below the text of the proposed rule set forth in the Wisconsin Petition, together with the Group's critique thereof.

A. Section (a)

> Advance approval for transportation of irradiated reactor fuel.
>
> (a) No licensee may transport, or deliver to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel in excess of 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding, unless that licensee first obtains the approval of the Commission.

Advance approval to transport has already been granted by the NRC, in the form of a general license under 10 C.F.R. § 71.12, on the basis of a generic determination regarding the safety of spent fuel shipments under prescribed conditions. The existing regulatory framework also requires certain specific approvals prior to shipment (e.g., with respect to specific routes). Additional shipment-specific approvals and determinations would be redundant and unnecessary, as well as unauthorized in some instances.[11/]

11/ It is uncertain whether the Wisconsin Petition contemplates advance approval of a shipping campaign or of an individual shipment. If the latter is intended all of the reasons cited for denial of the Wisconsin Petition apply *a fortiori*.

B. Section (b)

(b) An application for approval of a shipment of irradiated reactor fuel shall be made in writing at least 120 days prior to the proposed shipment, and shall demonstrate that:

(1) The applicant has fulfilled the requirements of § 73.37;

(2) The proposed shipment is necessary to meet the requirements of the licensee's operating license or required minimum fuel storage capacity;

(3) The proposed route complies with all applicable DOT safety and routing regulations;

(4) There are no route-specific conditions or hazards which create unique risks of accidents, sabotage or radiological exposure; and

(5) The applicant has evaluated alternatives to the proposed shipment and alternative routes and has demonstrated that the proposed shipment is the alternative for handling the irradiated reactor fuel which provides the least risk of radiological exposure to the public.

(6) The proposed shipping cask is shown to be capable of withstanding all reasonably foreseeable incidents along the proposed route which could interrupt the shipment.

1. Compliance with 10 C.F.R. § 73.37 (requirements for physical protection of spent fuel in transit) is already required for spent fuel shipments. This requirement, therefore, would be redundant.

2. The need for spent fuel transport has already been determined by Congress. Thus, shipment-specific determinations of need would be inappropriate. Moreover, the NRC lacks authority under the AEA to make such determinations. Thus, the rule in this regard would be without legal foundation.

3. Compliance with all applicable DOT safety and routing regulations is already required.

4. The NRC, in the exercise of its physical security responsibility under the existing regulatory framework, already requires shipment-specific approvals of routes for spent fuel transport. Questions relating to the safety of routing spent fuel are within DOT's jurisdiction under the NRC-DOT Memorandum of Understanding. The DOT has examined the need for routing approvals and has promulgated regulations applicable thereto.[12/]

5. See comments under 2 and 4, above. Moreover, the NRC's obligation is to assure that there is adequate protection of the public health and safety. It is not required to determine which alternative provides the least risk of radiological exposure to the public.[13/]

6. Packaging of spent fuel shipments is thoroughly addressed in 10 C.F.R. Part 71.

In summary, there is no basis for imposing the vague requirements of the Wisconsin Petition on NRC licensees.

12/ See, e.g., 43 Fed. Reg. 36,492, 36,494 (1978)(HM-164 Advanced Notice of Proposed Rulemaking)(discussion of shipment-specific licensing); 46 Fed. Reg. 5298, 5310 (1981) (HM-164 Final Rule)("State-designated routes are not considered to be shipment specific routes except under unusual, one-time-only shipment situations").

13/ See, e.g., 42 U.S.C. §§ 2012(e), 2013(d), 2232(a), 2156a, 2242(b)(1982); compare 49 U.S.C. § 1801 (1982) (authorizing DOT "to protect the Nation adequately" against hazardous materials transport risks); see City of New York v. DOT, 715 F.2d at 738.

C. Section (c)

> (c)(1) Upon receipt of the application, the Commission shall provide notice of receipt of the application in the federal register and to each state along the proposed route.
>
> (2) Any interested person, including any state or municipality along the proposed route, may submit written comments and request a hearing concerning the applicant's compliance with subsec. (b)(1), within 30 days after publication of the application in the federal register.
>
> (3) The Commission shall issue a decision on the application within 60 days after completion of any hearing held under subsec. (b)(2).

The Commission's rules already provide for prenotification to Governors of spent fuel shipments. 10 C.F.R. §§ 71.97, 73.37(f)(1984). The proposed provisions for written comments and a possible hearing on spent fuel shipments are redundant, unnecessary, potentially in conflict with the Commission's physical security requirements, and without legal basis, for the reasons previously discussed. This requirement would only contribute to delay and increased cost of spent fuel transport without any contribution to safety. Accordingly, the proposal has no basis in either fact or law.

D. Section (d)

> (d) The Commission's action under this section is an action for which an environmental impact statement may be necessary, in accordance with 10 C.F.R. § 51.5(b).

Based on the environmental studies cited previously, the NRC and the DOT have determined that the shipment of spent fuel under the current regulatory framework will not have a

significant impact on the environment and that the current regulations are adequate. Therefore, no action is being taken by the NRC in connection with approval of such transportation that requires preparation of an environmental impact statement. The Wisconsin Petition cites no new evidence that contradicts the NRC's previous determinations. Accordingly, this provision of the proposed rule lacks a factual foundation.

Conclusion

For all of the foregoing reasons, the Wisconsin Petition should be denied.

Respectfully submitted,

Leonard M. Trosten

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Attorneys for the Electric Utility Companies' Nuclear Transportation Group

Dated: April 5, 1985

DOCKET NUMBER PRM-71-10 (24)
PETITION RULE
(50 FR 4866)

Nuclear

GPU Nuclear Corporation
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Parsippany, New Jersey 07054
(201) 263-6500
TELEX 136-482
Writer's Direct Dial Number:

'85 APR-8 A11:54

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 4, 1985

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Service Branch

Dear Mr. Chilk:

Subject: Request for Comments on State of Wisconsin Filing of Petition for Rulemaking; Proposed Amendments to 10 CFR Part 71.

The staff of GPU Nuclear Corporation has reviewed the subject petition and is of the opinion that the proposed amendments to 10 CFR Part 71 are unnecessary.

The subject petition alleges three main shortcomings with respect to current regulatory requirements governing irradiated fuel shipment. Our response to each allegation follows:

1. Alleged Shortcoming - There is no Federal Agency considering the need for irradiated fuel shipments.

   Response - The NRC, under authority granted to it by the Atomic Energy Act of 1954 As Amended, controls the issuance of licenses which are necessary to receive, possess, use and transfer of radioactive material. Once a license is obtained, the material is the property of the licensee. As such, the licensee has the legal right to dispose of, sell or transfer the irradiated fuel to whomever deemed appropriate so long as the transfer complies with the conditions of the license. In the past, local governments have imposed regulations requiring the transporter to demonstrate a need for each shipment. All such regulations have been struck down by the courts as having been in violation of the interstate commerce clause of the U.S. Constitution (Kassell vs. Consolidated Freightways Corporation of Delaware 450 US 662, 1981). Therefore, establishment of such as requirement would be improper.

2. Alleged Shortcoming - There is no Federal Agency considering the safety or environmental risks associated with the selected routes, or the propriety of exposing the public to these risks.

DS11 add:
S. Higginton, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037

Acknowledged by card. 4/8/85

Response - Irradiated fuel is classified as a hazardous material. As such, it is controlled under the Hazardous Material Transportation (HMT) Act. This act identifies the Department of Transportation (DOT) as the Federal Agency controlling the transportation of hazardous material. To carry out this responsibility, the DOT has established regulations concerning routing, external radiation fields, labeling, loading, unloading, handling, storage and special transportation controls. In addition, DOT also controls carrier equipment and the qualification of carrier personnel. The NRC recognized the authority of the DOT in these matters by Memorandum of Understanding dated July 2, 1979. The U.S. Supreme Court has recently upheld regulations promulgated by the DOT concerning the routing of radioactive material.

The DOT and the NRC have previously evaluated the transportation of spent nuclear fuel and determined that the use of the Federal Interstate Highway System is the preferred routing for these shipments and provides the maximum transportation safety and minimizes the radiological risk. Current route planning by the shippers utilizes the interstate system as its first routing choice.

Following a request for routing approval from the shipper, the NRC surveys the proposed route and evaluates the acceptability of the route from a safeguards persepective. The shipper must provide information regarding its implementation of the safeguards requirements of 10 CFR 73.37 are fully recognized and executed for full compliance.

The Hazardous Material Transportation Act, DOT Docket HM-164, DOT regulations, and NRC regulations constitute a comprehensive regulatory scheme for transportation of spent nuclear fuel that insures the protection of the public health and safety. Provisions have been made to allow the involvement of state and local jurisdictions on matters of safety based on their specific knowledge of the local area conditions which may create unique risks of accidents. However, the unilateral imposition of divergent and inconsistent rules and regulations from jurisdiction to jurisdiction of necessity would not complement safety but would rather detract from it.

3. Alleged Shortcoming - There is no Federal Agency which currently requires adequate safeguards to protect against emergencies related to shipments of irradiated fuel.

Response - Response to transportation emergencies is necessarily site-specific. The position of the Federal Government on this matter is outlined in 44 FR 75568; "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and state planning and preparation, when an accident does occur the

response is, of necessity, a local responsibility." The DOT has the responsibility to reduce the probability of transportation emergencies. This is done by requiring the shipments to travel over routes which have been demonstrated to offer the highest level of safety, by regulating carrier equipment and by ensuring the adequacy of the training of drivers. Also, the Department of Energy has developed regional response teams to assist local authorities in the event of a "nuclear" emergency. As a result of extensive reviews performed, the DOT has concluded that "... spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals, the containment of which could also be expected to exceed the capacity of local groups to respond" (49 FR 46664).

Spent fuel shipping casks have been designed and tested to standards that provide assurance that the casks would be capable of withstanding all reasonably foreseeable incidents during transit. The cask vendor license application must treat these subjects in detail prior to the issuance of a certificate of compliance by the NRC for the shipping package. The requirements to demonstrate such capability is done and will continue to be accomplished without further regulation.

As currently structured the proposed rulemaking would require the imposition of a cumbersome procedure for each shipment. Since most shipping campaigns consist of many shipments, the proposed rulemaking would constitute an overly complicated and unduly burdensome restraint of spent fuel transport with no demonstable increase in safety or reduction of radiological risk. Each campaign should be treated as a whole since all actions are identical for each shipment within the campaign. However, since the proposed rulemaking covers areas of regulation currently subject to substantial and sufficient protective regulation, no new program of regulation is necessary in GPUN's view, especially as drawn in the Wisconsin proposed amendments.

Based on the above, it is our opinion that the petition for rulemaking should not be honored. The petition has failed to demonstrate a need for rulemaking or that such rulemaking would enhance the health and safety of the public. Nor has the petition shown cause for the NRC to preempt the authority of the DOT in these matters.

Sincerely,

J. R. Thorpe
Director
Licensing & Regulatory Affairs

RKL:dls:1639f

PETITION RULE PRM-71-10 (25)
(50 FR 4866)

Badger Safe Energy Alliance
P.O. Box 68, Durand, Wisconsin 54736
Working for a Better Energy Future

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

4/3/85
TO: JOHN PHILIPS, NRC
FR: WILL FANTLE, for BSEA
RE: DOCKET NO. PRM-71-10

The Badger Safe Energy Alliance (BSEA) strongly supports the petition by the State of Wisconsin to the Nuclear Regulatory Commission seeking a public rulemaking proceeding for the public evaluation and approval of proposed shipments of irradiated spent nuclear fuel.

The Badger Safe Energy Alliance is composed of citizens throughout western Wisconsin concerned with the environmental problems associated with centralized energy production and distribution, and with the promotion of energy conservation and renewable energy sources. Many members of BSEA live along the rail route being used by Northern States Power Co. for the shipment of irradiated spent nuclear fuel from its Monticello reactor to a temporary storage pool at Morris, Il. BSEA was formed in 1978.

BSEA members are very upset with the clear lack of regulation that currently exists at the federal level, principally the NRC, with regard to the shipment of irradiated spent nuclear fuel. Specifically, BSEA members are concerned with:

- the lack of a certificate of need proceeding which would verify the "urgent public necessity and need" to ship spent nuclear fuel prior to the shipment of irradiated spent nuclear fuel.

- the lack of a careful examination of alternatives to proposed shipments of irradiated spent nuclear fuel, with the mandate that prudent and cost effective onsite storage alternatives be undertaken prior to the granting of a certificate of public necessity and need.

- the lack of actual physical crash and accident testing of the cask model used for the shipment of irradiated spent nuclear fuel, verifying that the cask is capable of withstanding all reasonable accident scenarios, including fire, water submersion, crushing, drops and falls.

- the lack of demonstrated emergency response capability to a radiation accident by emergency personel, first responders, and

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Acknowledged by card 4/8/85 pa

hospitals along irradiated spent nuclear fuel shipping routes.

- the lack of a clear evaluation of alternative routes for irradiated spent nuclear fuel shipments, listing the unique hazards and risks of each route examined.

Therefore, the Badger Safe Energy Alliance requests that the NRC hold a public rulemaking proceeding that would examine the issues raised by the State of Wisconsin and other petitioners, and that such a hearing be held in Wisconsin or near the route presently being used by the Northern States Power Co. for the shipment of irradiated spent nuclear fuel.

for BSEA,

Will Foutle

Warren A. Viehl

DOCKET NUMBER
PETITION RULE PRM-71-10 (26)
(50 FR 4866)

N. 6218 Jason St.
Onalaska, WI 54650
1 April 1985

'85 APR -8 A11:57

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir:

I am writing to register my support for the State of Wisconsin's rulemaking petition, Docket No. PRM 71-10.

I strongly support this petition and believe the public interest will be served best by allowing such participation. My support of this petition is also based on my belief that no adverse or ill effects will be realized by power companies or shippers of irradiated reactor fuel.

Thank you.

Sincerely,

Warren A Viehl

Warren A. Viehl

Acknowledged by card 4/8/85 pr

DS11 add:
S. Wigginton, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037

DOCKET NUMBER
PETITION RULE PRM 71-10 (27)
(50 FR 4866)

STATE OF WISCONSIN

RADIOACTIVE WASTE REVIEW BOARD

921 Tenney Buildin
110 E. Main Street
Madison, WI 53702
(608) 266-0597
(608) 267-7615

'85 APR -8 A11:57

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 3, 1985

Mr. Samuel J. Chilk, Secretary
Nuclear Regulatory Commission
Washington, D. C. 20555

Attn: Docketing and Service Branch

RE: Docket No. PRM-71-10

Dear Mr. Chilk:

The purpose of this letter is to register the Wisconsin Radioactive Waste Review Board's strong support for the petition for rulemaking, dated December 13, 1984, filed with the Commission by the State of Wisconsin.

The Radioactive Waste Review Board is charged with the responsibility of being an advocate for the people of Wisconsin in the Federal government's search for nation-wide nuclear waste repositories.

In carrying out these responsibilities, the Review Board is extensively studying the transportation issue. It is apparent that large numbers of shipments of spent fuel will be crossing Wisconsin to an eventual repository, whether or not Wisconsin is one of the host states.

In studying the current shipments taking place across Wisconsin, the Review Board shares the Governor's concern that there is no Federal agency considering the need for the shipments, the safety or environmental risks associated with the selected routes, or the propriety of exposing the public to these risks. And, there is no agency currently requiring adequate safeguards to protect against emergencies.

The Federal government has the responsibility to protect the health and safety of the public, as well as the environment, from hazards associated with the shipment of high-level radioactive waste and spent fuel. If the Federal government fails to act, it will be inviting states and local units of government to act in their own best interests.

We urge the Nuclear Regulatory Commission to act favorably on Wisconsin's petition and issue a proposed rule to amend 10 CFR Part 71 in the manner that Wisconsin has proposed.

Thank you for your favorable attention to the petition.

Sincerely,

Joe Strohl

State Senator Joseph Strohl, Chairman
Wisconsin Radioactive Waste Review Board

JS:mb

DS11 add: 1/0
S. Wigginton, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037

Acknowledged by card 4/8/85 pc

DOCKET NUMBER
PETITION RULE PRM 71-10 (28)
(50 FR 4866)

STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002

'85 APR-8 P

ED HERSCHLER
GOVERNOR

April 3, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

RE: Docket No. PRM-71-10, State of Wisconsin; Filing of Petition for Rulemaking, 50 FR 4866 (Feb. 4, 1985).

Dear Sir:

I would like to submit this letter as a written comment concerning the above-referenced petition for rulemaking submitted by the State of Wisconsin. In general, Wyoming, as a corridor state for shipments of irradiated reactor fuel (spent fuel), supports Wisconsin's petition and proposed rule. Wyoming agrees with Wisconsin's allegations that there are significant gaps in the regulatory program regarding shipment of spent fuel. Specifically,

- there should be a federal policy designed to minimize spent fuel shipments prior to the operation of a commercial nuclear waste repository;

- there should be a federal regulatory system for evaluating the <u>need</u> for spent fuel shipments prior to the operation of a repository;

- additional transport requirements or emergency response planning procedures should be imposed if certain transportation routes entail unique safety risks which were not evaluated through the generic accident conditions used for cask licensing procedures; and

- the federal government, through DOE and NRC, should support, with funds and training, state emergency response efforts. This is especially important for corridor states which have neither waste generators nor storage facilities from which to derive revenues and expertise for emergency response preparation, planning and implementation.

DS11 add:
S. Wigginton, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037

Acknowledged by card. 4/15/85 pr

Wyoming believes that Wisconsin's petition raises significant issues with the current regulation of commercial spent fuel shipments. We would respectfully request that any action on the petition by NRC consider the points discussed above.

Thank you for your attention and consideration of this comment.

Sincerely,

Ed Herschler

EH:nfp

cc: Honorable Anthony S. Earl
Julius Haes

DOCKET NUMBER
PETITION RULE PRM 71-10 (29)
(50 FR 4866)

SIERRA CLUB
North Star Chapter

DOCKETED USNRC

5 April 1985

'85 APR -8 P12:25

OFFICE OF SECRETARY DOCKETING & SERVICE BRANCH

U.S. Nuclear Regulatory Commission
Secretary of the Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: 10 CFR Part 71-Docket No. PRM-71-10

Dear Sir:

I am writing this letter on behalf of the North Star Chapter of the Sierra Club, which has over 6,200 members within the state of Minnesota. The below comments refer to the State of Wisconsin's filing of petition for rule making as it pertains to 10 CFR Part 71.

The State of Minnesota finds itself in the same position as the State of Wisconsin in that shipments of spent nuclear fuel are currently proceeding through the state from a nuclear reactor facility in Monticello, Minnesota to a temporary storage facility in Morris, Illinois. The State of Minnesota has not taken any action, although urged to do so by various environmental groups, to ensure that such shipments are transported in the safest possible manner. The State has repeatedly believed that federal regulations and acts of Congress preempt the State from taking any action. The North Star Chapter does not necessarily agree with the logic of the State's position on the issue of preemption, however, the request of the State of Wisconsin to amend 10 CFR Part 71 will help relieve some safety concerns as it relates to irradiated reactor fuel shipments.

The safety of the public and the environmental are of the utmost concern. We would agree with and support the proposed amendments to 10 CFR Part 71 as requested by the State of Wisconsin with some minor additions. These are:

> Section (b)(5). Language should be added to the last sentence of this section as follows: ". . . the irradiated reactor fuel which provides the least risk of radiological exposure to the public <u>and environment.</u>"

Boyd Place, Suite N • 2929 4th Avenue South • Minneapolis, MN 55408 • (612) 827-3850

Acknowledged by card. 4/8/85

Section (c)(2). Language should be added to this section as follows: "The commission will hold hearing(s) within 60 days within the State of the requested hearing."

The NRC has a responsibility to protect the public and enviroment against risk of radiation exposure and because of this responsibility such proposed amendments should be adopted.

Very truly yours,

John E. Grzybek
Chapter Chair
Conservation Chair
North Star Chapter Sierra Club

John E. Grzybek
4153 Harriet Avenue South
Minneapolis, MN 55409

JEG:gw
cc: Michael Shoop
Nuclear Energy Task Force Chair

DOCKET NUMBER
PETITION RULE PRM 71-10 (30)
(50 FR 4866)

CP&L
Carolina Power & Light Company

April 5, 1985

'85 APR -8 P12:27

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

FILE: NF-511.0401B SERIAL: NF-85-162

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

COMMENTS IN RESPONSE TO NOTICE
OF STATE OF WISCONSIN PETITION
FOR RULEMAKING ON SPENT FUEL TRANSPORTATION

Dear Mr. Secretary:

We have reviewed the subject notice and appreciate this opportunity to submit our comments. Carolina Power & Light Company is a member of the Electric Utility Nuclear Transportation Group, and we endorse the Group's comments which are being filed separately. In addition, we are enclosing comments of particular concern to Carolina Power & Light Company.

Yours very truly,

S. R. Zimmerman
Manager - Nuclear Licensing

RKK/ppl

Enclosure

T402SAU

411 Fayetteville Street • P. O. Box 1551 • Raleigh, N. C. 27602

Acknowledged by card 4/8/85

ATTACHMENT

1. For reasons stated in the Nuclear Transportation Group's comments, the proposed amendments to 10CFR71 are inappropriate and unnecessary.

2. We find some of the proposed regulations so vague that one could not demonstrate compliance. It is not clear what is meant by a "unique risk" in Item (b) (4), "least risks" in Item (b) (5), or "withstanding," "all reasonably foreseeable incidents" and "interrupt the shipment" in Item (b) (6). We also believe that Item (b) (6) is inconsistent with the existing cask licensing criteria.

3. There are probably thousands of shipments of flammable fuels (e.g., gasoline), liquified fuels (e.g., propane and liquified natural gas), and chemicals (e.g., chlorine) occurring throughout the U.S. on a daily basis. Any transportation accident with these hazardous materials could potentially cause significant harm to the public, yet there is no requirement (nor any need for requirements) for any "Federal Agency considering the need for shipment, the safety or environmental risks associated with selected routes, or the propriety of exposing the public to these risks." Accordingly, spent fuel which has relatively benign credible accident consequences to the public relative to such other materials should not be subjected to the proposed regulations. Congress, through its laws, has already decided that nuclear energy is an acceptable societal risk.

4. The State of Wisconsin's petition indicates that the Department of Energy, the Department of Transportation, and the Nuclear Regulatory Commission could potentially influence spent fuel transportation decision-making through responsibilities under the Nuclear Waste Policy Act, the Hazardous Transportation Act, and Title 10 of the Code of Federal Regulations, respectively. While this is true, we know of no instances where failure to meet these responsibilities resulted in any significant harm to the public or environment. The fact that the Department of Energy's responsibility for shipment of spent fuel does not begin until it takes title has nothing to do with whether shipments before it take title are necessary or unnecessary. Indeed, prior to the Department of Energy taking title, the Nuclear Waste Policy Act states that generators and owners of spent fuel have the primary responsibility to provide for the spent fuel.

   With regard to the Department of Transportation, we fail to understand why illegal actions by states in areas clearly reserved to the Federal Government imply any Department of Transportation failure to meet its requirements. In any case, this petition seems an inappropriate place to challenge the Department of Transportation.

   With regard to the Nuclear Regulatory Commission, we fail to understand why the State of Wisconsin points out that the Nuclear Regulatory Commission does not regulate the carrier or consider its safety record. It seems obvious to us that the Department of Transportation provides such regulation.

T402SAU

STATE OF NEBRASKA

ROBERT KERREY • GOVERNOR • KANDRA HAHN • DIRECTOR

DOCKETED USNRC

'85 APR -9 P3:14

OFFICE OF SECRETARY DOCKETING & SERVICE BRANCH

April 5, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

DOCKET NUMBER
PETITION RULE PRM 71-10 (31)
(50 FR 4866)

Attention: Docketing and Services Branch

Dear Sir or Madam:

These comments are submitted in response to Docket No. PRM-71-10, the petition for rulemaking filed by the State of Wisconsin. The Federal Register gave notice of the comment period February 4, 1985 at page 4866.

The State of Wisconsin's petition has raised a number of issues, the most basic of which concerns the accountability of federal agencies to the public for decisions that affect the safety of the public. In my judgment, unless this question is squarely addressed by the NRC, it will continue to arise in other situations, probably with increasing frequency as more utilities consider transportation of spent fuel as a way to manage their storage problems.

The recent experience in Nebraska with a series of shipments from the Cooper Nuclear Station in Brownville, Nebraska to the General Electric storage facility at Morris, Illinois may provide some useful insight to your deliberations. Before the first train of spent fuel was dispatched in August, 1984, there were two public discussions of the need for the shipments. The first was a public hearing of the Committee on Agriculture and Environment of the State Legislature in August, 1982. The second was a meeting of the Lincoln City Council in February, 1983. Both these meetings were very well attended and at each, dozens of Nebraskans spoke their minds.

Citizens here turned to consideration of law or ordinance at the state and local level exactly because there was an absence of formal process for public and state review of federal agency decisions. And clearly, the forums used were no substitute for the methodical, orderly examination of information and choices the NRC could provide in a proceeding of the kind Wisconsin proposes. Yet even these meetings had some constructive results.

APR 9 1985
Acknowledged by card.....

NEBRASKA ENERGY OFFICE, BOX 95085, LINCOLN, NEBRASKA 68509-5085 PHONE (402) 471-2867

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER M/F/H

The utility involved--Nebraska Public Power District--was able to demonstrate that it had reviewed alternative means of addressing its storage problems. (It chose transportation to Morris largely because of uncertainty about the timing of NRC licensing of dry storage on site.)

At the same time, public concern for safety has spurred state agencies, the utility, and the carrier to take safety precautions beyond the minimum required by federal regulation. For example, the Nebraska State Civil Defense Agency held workshops for first responders--local fire and public officials--along the route. It also published a plan for Emergency Response for Non-Power Reactor Incidents, including transportation incidents, with one volume addressed to the state level and a second to local governments. The utility decided to provide a special vehicle which will serve as an escort for each shipment, providing special radiation monitoring and communications equipment. The railroad agreed to provide its employees with film badges. An important saftey measure taken is the use of special train service.

This short history suggests at least three reasons for a positive response to the basic request made by Wisconsin for NRC determination and state and public review of the need to make shipments, route selection and safety measures:

- Open discussion of the issues may result in a greater range of choices both formal and informal, as happened in Nebraska.

- Fears that public participation would somehow get out of hand and undermine rational, technically-sound decisionmaking are probably not realistic. Reasonable resolution leaves everyone better off--utilities, carriers, state officials and citizen-ratepayer-taxpayers.

- If the NRC itself provides a public forum, resort to state and local government as a source of information and discussion is less likely. Legally futile attempts to ban spent fuel transportation by local ordinance can only generate local resentment and, in the long run, undermine federal authority to regulate spent fuel transportation.

Therefore, I urge you to recognize the value of a knowledgeable NRC review of the need for and safety of a particular set of shipments and the advantages of flexibility that open public discussion such a review would introduce.

I believe the Commission will recognize that the days when experts can announce to the public that there is "no problem" in handling spent nuclear fuel are gone. Citizens will satisfy themselves on these matters as is their right in a democracy. I urge you to provide informative, constructive channels for that resolution.

Yours truly,

Kandra Hahn

Kandra Hahn
Director

KH:MM:me:2332E

DOCKET NUMBER
PETITION RULE PRM 71-10 (32)
(50 FR 4866)

DOCKETED
USNRC

GENERAL ASSEMBLY

STATE OF ILLINOIS

'85 APR -9 P3:17

MICHAEL J. MADIGAN
SPEAKER
316 CAPITOL
SPRINGFIELD, ILLINOIS 62706

HOUSE OF REPRESENTATIVES
EX OFFICIO MEMBER
ALL HOUSE COMMITTEES

DOCKETING & SERVICE BRANCH

April 5, 1985

U.S. Nuclear Regulatory Commission
1717 "H" Street N.W.
Washington, D.C. 20555

Dear Commissioners:

I am writing in my capacity as Speaker of the Illinois House of Representatives to urge your adoption of the rule regulating the Transportation of Irradiated Reactor Fuel that has been proposed by the State of Wisconsin. Your prompt action on this petition is vital to assuring that the health and safety of the citizens of Illinois will be protected from the hazards posed by the increasing shipments of spent fuel through our state.

Illinois has quickly become the crossroads for the drastically increasing frequency of fuel shipments taking place in this country. Hundreds of tons of these highly radioactive wastes are being shipped to the only "away from reactor" storage facility in the U.S. at Morris, Illinois. Over one hundred truck and rail shipments of spent fuel rods have started to be transported to Illinois from New York; California, Nebraska and Minnesota.

Despite the extreme hazard of these radioactive materials the safety of these shipments has not been adequately assured. The need for these shipments and the safety or environmental risks associated with the specific routes of the individual shipments has not been addressed in the current licensing process. The existing regulations do not require safeguards to protect the public in case of an emergency or accident in route.

The Wisconsin proposal before the Commission represents an important advance in assuring the safety of individual shipments. The petition proposes to establish a licensing and safety review process very similar to state permitting requirements that have been proposed by legislation in Illinois. Because of federal preemption under the Hazardous Materials Transportation Act, however, the states have very limited authority to regulate the shipments of such wastes. Strengthening the requirements is the most appropriate method to assure the safety of these radioactive shipments.

Acknowledged by card APR 9 1985

The prompt adoption of this proposal will assure that adequate safeguards are taken. It will also assure that the state and the public at large are given meaningful opportunity for input on how these shipments proceed. The citizens of Illinois and other affected states that are subject to the hazards of these highly radioactive shipments have the right to be assured that all possible steps are being taken to assure that their safety is being protected. I urge your prompt affirmative action on this petition.

With kindest personal regards, I remain

Sincerely yours,

Michael J. Madigan

MICHAEL J. MADIGAN
Speaker of the House

MJM:js

DOCKET NUMBER
PETITION RULE PRM 71-10 (33)
(50 FR 4866)

DOCKETED
USNRC

'85 APR 10 P3:40

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 1, 1985

John Philips, Chief
Rules and Procedures Branch
Division of Rules and Records
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: DOCKET NO. PRM-71-10

Dear Mr. Philips:

I am very much in favor of Governor Earl's petitioning the Nuclear Regulatory Commission to establish a rule-making proceeding for the evaluation and approval of spent fuel shipments of the type being made by Northern States Power Company through the State of Wisconsin.

What is wrong with addressing the problems of health, cask safety, need or the protection of the environment? What is wrong with questioning if the route is protected from terrorists?

Until these questions are answered satisfactorily, I think it is disgraceful these shipments are allowed to continue.

Sincerely,

Margel R. Johnson

Margel R. Johnson
Route 2, Box 300
River Falls, Wi. 54022

APR 10 1985
Acknowledged by card.....

DOCKET NUMBER
PETITION RULE PRM 71-10
(50 FR 4866) (34)

STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87503

TONEY ANAYA
GOVERNOR

April 8, 1985 '85 APR 11 P2:49 RN 1029

Mr. Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Docketing and Service Branch

REFERENCE: Docket Number PRM-71-10
Petition by the State of Wisconsin

Dear Mr. Chilk:

The State of New Mexico supports the State of Wisconsin's contention that the current rules under CFR Part 71 cited in the petition should be thoroughly reviewed by the Commission. Further, the Commission should provide ample review and comment opportunity for both the state governments and the public impacted by the campaign to ship over 1,000 spent fuel assemblies over the past five years.

Specifically, we believe that prior to any major campaign to ship radioactive wastes between two or more points, the following actions should occur:

(1) A thorough public review of the proposed action;

(2) An opportunity for affected states to participate in decisions for routing of "highway route controlled quantity shipments" in accordance with DOT Regulations 49CFR 173 through 49CFR178;

(3) An understanding reached with the affected states of the roles of all parties in inspection of shipments, emergency response, prior notification, and liability.

Thank you for the opportunity to comment.

Sincerely,

TONEY ANAYA
Governor

cc: The Honorable Anthony S. Earl, Governor, State of Wisconsin
Ms. Denise D. Fort, EID Director

Acknowledged by card APR 12 1985

DOCKET NUMBER
PETITION RULE PRM 71-10 (50 FR 4866) (35)

GENERAL ELECTRIC

NUCLEAR FUEL AND SPECIAL PROJECTS DIVISION
GENERAL ELECTRIC COMPANY • MORRIS OPERATION • 7555 EAST COLLINS ROAD • MORRIS, ILLINOIS 60450 • (815) 942-5590

April 9, 1985

'85 APR 10 A10:15

Secretary of The Commission
US Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Gentlemen:

SUBJECT: COMMENT ON "STATE OF WISCONSIN, FILING OF PETITION FOR RULEMAKING". (DOCKET NO. PRM-71-10, 50FR 4866-7)

General Electric Company herein provides comments in response to the referenced notice of request to the NRC for proposed rulemaking.

The petition for rulemaking dated December 13, 1984 filed by the State of Wisconsin is apparently based on the premise that the transport of nuclear spent fuel is not adequately regulated.

Spent fuel transport is one of, if not the most, heavily regulated transportation activities associated with a transportable commodity. The basic regulatory system for transport of spent fuel has been demonstrated by experience nationally and internationally to be sufficiently encompassing to ensure protection of public health and safety.

In addition, the uniform federal regulation - which now exists - provides for the efficient and direct movement of hazardous materials in commerce, thereby minimizing the tortuous routings and delays which would undoubtedly result as shippers and carriers tried to conform with or avoid a plethora of conflicting local rules.

The US regulatory system already includes provision for:

- USNRC approval of routes according to established criteria.
- USDOT/USNRC regulation of shipping container type to ensure public safety.
- USNRC regulation of the use of shipping containers and the establishment of rules for radiological protection of the public.
- USDOT regulation of hazardous material transport.
- State enforcement of USDOT rules (through incorporation of USDOT rules in the state jurisdiction).
- USNRC regulation of safeguard aspects of spent fuel transportation.

Acknowledged by card APR 12 1985

In addition, the USNRC has published environmental impact statements on the transportation of radioactive materials and found the risks acceptable.

The Wisconsin petition does not contain any new provision that would improve the public health and safety.

Specific comments paragraph by paragraph on IV. Wisconsin Proposed Amendments to 10CFR.71 as set forth on Page 4867 of the Federal Register Vol. 50, No. 23, Monday, February 4, 1985 are:

(a) Fulfillment of the Commission's "pervasive" regulatory requirements already constitutes a blanket approval to transport large quantities of radioactive materials. To require an additional Commission approval is redundant.

(b)(1) The shipper/carrier by existing regulation must conform to Paragraph 73.37 of 10CFR Part 71 and all other requirements of the regulation or suffer (possibly severe) penalties. To reaffirm compliance to this requirement is redundant.

(b)(2) Necessity as defined by the Wisconsin petition is not a legitimate factor. A decision to transfer spent fuel is a business decision based on business needs. If existing regulations are properly complied with, the public health and safety is well protected.

(b)(3) Existing DOT safety and routing regulations apply to transport of all hazardous materials, of which radioactive materials are only one category. The proposal is redundant.

(b)(4) There are frequently local or temporary conditions which affect transportation routes. These are called out in various local and state advisories, but generally affect all transportation indiscriminately not just radioactive shipments, e.g.; detours, weight restrictions, road damage (flood or washout), etc. It is meaningless to "demonstrate" 120 days in advance that "...there are not route specific hazards which create unique risks..." when such hazards usually occur on short notice and are well handled by responsible state or local agencies. Longer term detriments to the transportation of spent nuclear fuel or regulated large radioactive material shipments are recognized in the existing route approval process.

(b)(5) Regulations already require consideration of routes. Selection of a route based only on minimization of radiological exposure to the public is inadequate. Of far greater concern is the risk of vehicular accident -- hence distances travelled, quality of the highway or railway route must be considered. Traffic density must receive consideration as well.

(b)(6) Certification of the cask as provided by the USDOT/USNRC regulatory process is for the specific purpose of showing that the cask is "...capable of withstanding all reasonably foreseeable incidents along the proposed routes which could interrupt the shipment.".

(c)(1) Currently the USNRC publishes a listing of approved routes that cover most shipments of spent fuel. Cognizant state departments should already be aware of such approved routes. Truck shipment "preferred routes" may presently be specified by the states. (c)(1) is redundant.

(c)(2) Safeguarded information itself must be safeguarded and kept from public disclosure. This section is inconsistent with existing safeguard requirements, which are currently being considered for revision.

(c)(3) The process requested will require a minimum of 150 and a maximum of 210 days elapsed time from application to approval and will not add to or improve the safety and health of the general public. It would require the USNRC to implement on an ad hoc basis what has already been taken care of by the well tested regulatory process.

In the past, single shipments have traversed 13 states and countless smaller jurisdictions. The hearing notification and EIS process described in (c)(1), (c)(2), (c)(3) and (d) would cause an enormous use of USNRC and utility resources for little if any positive public gain.

Sincerely,

E. E. Voiland

E. E. Voiland
Manager, Morris Operation
General Electric Company

EEV:tp

DOCKET NUMBER
PETITION RULE PRM 71-10 (36)
(50 FR 4866)

LAKELAND AUDUBON SOCIETY, INC.

DOCKETED
USNRC

April 8, 1985

'85 APR 15 A11:24

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Mrs. Samuel J. Chilk
Nuclear Reg. Comm.
Washington, D.C. 20555

Att: Docketing & Service Branch
RE: Docket No. PRM-71-10

Dear Sir:

We would like to register our support for the petition for rulemaking, dated 12/13/84 filed with the Commission by the state of Wisconsin.

We share the Governor's concern that there is no Federal agency considering the safety to the public & environmental risks involved with radioactive waste shipments across the state at this time or in the future.

Thank you for your attention. Sincerely,

Helen Kluge
Conservation Chair

P.O. BOX 473 · ELKHORN, WISCONSIN 53121

Acknowledged by card. APR 15 1985

DOCKET NUMBER
PETITION RULE PRM 71-10
(50 FR 4866) (37)

BOSTON EDISON COMPANY
800 BOYLSTON STREET
BOSTON, MASSACHUSETTS 02199

WILLIAM D. HARRINGTON
SENIOR VICE PRESIDENT
NUCLEAR

'85 APR 15 P12:24

April 10, 1985
BECo 85-069

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn: Docketing and Service Branch

Response to Request for Written Comments for the State of Wisconsin Petition for Rulemaking

Dear Sir:

By Federal Register notice (50 Fed. Reg. 4866, February 4, 1985) the Commission has requested written comments for a petition for rulemaking filed by the State of Wisconsin (Docket No. PRM-71-10). Boston Edison Company is a power reactor licensee and although we have no immediate plans to ship spent reactor fuel this petition could affect our future operations. We have, therefore, reviewed the petition for rulemaking and hereby submit limited comments reflecting our concerns.

The petitioner has requested that a regulatory process be established to provide an opportunity for public participation in the evaluation and approval of proposed shipments of spent reactor fuel. We feel that the nature of the activity which is proposed to be regulated does not warrant the imposition of new regulations as described in the petition. Although we recognize that there are potential risks associated with the shipment of spent reactor fuel we also feel that an adequate regulatory framework currently exists with the Nuclear Regulatory Commission, Department of Transportation, and Department of Energy. The addition of new regulatory requirements upon a licensee, the potential delays associated with involvement in public hearings, and the costs incurred to prepare a full environmental impact statement are not justified given the good overall track record of radwaste shipments and especially spent reactor fuel shipments.

Moreover the proposed rule is silent as to whether its requirements would be repeatedly imposed for a specific shipping route even though approval had been granted for a prior shipment. The rule as written could be construed so as to benefit individuals interested in making frivolous repeated requests for hearings for already established shipping routes.

Finally, since we believe the petitioner does not have an adequate basis for the proposed rule we also are opposed to petitioner's assertion that the NRC should refrain from approving routes for any shipments of irradiated reactor fuel until the required rule has been promulgated. The additional restriction wrongfully assumes that any spent fuel shipments are inherently unsafe.

APR 15 1985
Acknowledged by card.....

In summary we feel the petition for rulemaking is not needed and that current regulatory requirements are adequate in this area. Boston Edison Company appreciates the opportunity to comment on this issue. We hope our views on this matter will be considered by the Commission in their disposition of this issue.

Very truly yours,

W D Harrington

TFF/kmc

DOCKET NUMBER
PETITION RULE PRM 71-10 (38)
(50 FR 4866)

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
P.O. BOX 898
SACRAMENTO, CALIFORNIA 95804
(916) 445-6211

DOCKETED
USNRC

'85 APR 16 A11:30

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 11, 1985

File No.: 60.4062.A6078

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention Docketing and Service Branch

Subject: State of Wisconsin Petition for Rulemaking; Docket No. PRM-71-10

It is the opinion of this Department that adoption of Docket No. PRM-71-10 will jeopardize the safety of spent radioactive fuel shipments. Also, the proposals contained in this docket could ultimately prevent the transportation of spent radioactive fuel due to administrative delays or legal actions associated with the public hearing process.

We believe the highly controversial issue of whether this material should be transported is not an appropriate subject for resolution through the rulemaking process. Any action that could have such an impact on the entire nuclear energy industry should be resolved only by Federal legislative action.

Revealing the actual shipment dates and times, which will ultimately occur at public hearings, is in direct conflict with Title 10, Code of Federal Regulations, Part 73.21. The security of these shipments must not be compromised and this is California's primary concern with this notice of proposed rulemaking.

Very truly yours,

L. M. Short

L. M. SHORT, Chief
Enforcement Services Division

Acknowledged by card APR 16 1985

Booth Gardner
~~JOHN SPELLMAN~~
Governor

DOCKET NUMBER
PETITION RULE PRM 71-10 (39)
(50 FR 4866)

WARREN A. BISHOP
Chair

STATE OF WASHINGTON
NUCLEAR WASTE BOARD
Mail Stop PV-11 • Olympia, Washington 98504 • (206) 459-6670

'85 APR 15 P1:22

April 10, 1985

The Honorable Nunzio Palladino
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Palladino:

REF: Docket No. PRM-71-10

This is written to support the Petition for Rulemaking submitted by the State of Wisconsin on December 13, 1984, and referenced above.

As one of three states DOE has selected for investigation for a high-level waste repository, we are acutely aware of the volumes and frequency of spent fuel shipments which would occur if the repository is developed in Washington. Both road and rail modes of shipment are subject to accidents caused by weather, mechanical failure, deteriorated roads and railbeds, and human error. We have histories of accidents in both modes and we understand better than any federal agency their probable causes and probable frequency of occurrence under specific conditions.

Yet federal agencies virtually ignore this capability in conceptual planning for a repository. The Draft Environmental Assessment of the Hanford site by the U.S. Department of Energy considered only a radius of a few miles around the site, and even so it used only nonspecific national risk factors. USDOE policy appears to be based on truck route selection by commercial operators, who naturally will have incentives to cut time and costs. The rail system in the Hanford region needs maintenance, yet there is no effective means of requiring upgrading of the lines before spent fuel shipments would begin. The U.S. Department of Transportation has taken a strong position <u>against</u> states and local governments who attempt to participate in and influence routes and standards for waste shipments, with the promise of lawsuits.

APR 16 1985
Acknowledged by card.....

Transportation safety is among the concerns uppermost in the minds of our citizens, as we have established in extensive public meetings and surveys. Communities with special, specific hazards in their jurisdictions are going on record as opposing repository development in the state, largely on the basis that the federal agencies are indifferent and unresponsive to their needs. Assurances by the U.S. Department of Energy that risks of accidents are low, risks of loss of container integrity are minute and risks of public exposure are negligible, are not taken seriously by people who have seen hazardous materials dispersed into the community as the result of transportation accidents.

Since the Nuclear Regulatory Commission bears a great deal of responsibility for ensuring and verifying safety in all aspects of a repository, certainly including route-specific transportation, it would be both prudent and constructive to establish acceptable standards and procedures today through formal rulemaking.

I urge you to support and implement the proposal made by the State of Wisconsin, thereby conveying an important message to other federal agencies which will turn out to be in their best interests as well as those of the general public.

Sincerely,

Warren A. Bishop
Chair
Nuclear Waste Board

cc: Governor Booth Gardner
Governor Anthony S. Earl

DOCKET NUMBER
PETITION RULE PRM 71-10 (40)
(50 FR 4866)

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

TECHNICAL SERVICES
SECTION

TELEPHONE (302) 736-4771

'85 APR 17 A10:48

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 15, 1985

Secretary of the Commission
ATTN: Docketing and Service Branch
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Gentlemen:

The "State of Wisconsin: Filing of Petition for Rulemaking (Docket No. PRM-71-10)" regarding the absence of a lead Federal agency of spent irradicted fuel on the nation's highways has been reviewed by several interested State of Delaware agencies. In response to the referenced Notice we offer the following comments:

1. No single Federal agency answerable to the public exists for "considering the need for the shipments, the safety or environmental risks associated with the selected routes, or the propriety of exposing the public to these exists." While the DOE, DOT, NRC and EPA each have certain specific responsibilities, none has assumed a leadership role in this arena.

2. The NRC has the primary responsibility to protect the public against risks of radiation exposure from the transport of spent irradiated fuel shipments. Therefore, the NRC is the logical Federal agency to take the lead which probably will require Congressional action.

3. In the interim, NRC should adopt the proposed amendments to 10 CFR Part 71 as given in the referenced Docket. Adoption of the amendment would establish 100 rems/h @ 3 ft. (unshielded) from an accessible surface of a container of irradiated reactor fuel as the maximum external radiation dose rate unless further approved by the Commission. The dose rate of 100 rems/hr (unshielded) is another matter that deserves further explanation.

Sincerely,

Harry W. Otto

Harry W. Otto, Ph.D.
Manager

HWO:dp

Acknowledged by card 4/17/85

DOCKET NUMBER
PETITION RULE PRM 71-10 (41)
(50 FR 4866)

RICHARD F. CELESTE
GOVERNOR

STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43215

DOCKETED
USNRC

'85 APR 18 A11:19

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 8, 1985

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

It has been brought to my attention in the February 4, 1985, Federal Register that Governor Anthony S. Earl and Attorney General Bronson La Follette of the State of Wisconsin have petitioned the Nuclear Regulatory Commission to establish a regulatory process that would give states and other interested parties an opportunity to participate in the evaluation and approval of shipments of spent nuclear fuel.

As Governor of the State of Ohio, I too am concerned with the transport of nuclear waste. Therefore, I agree with the petition for rulemaking from the State of Wisconsin; and I recommend that the U.S. Nuclear Regulatory Commisison adopt the proposed amendments to 10 CRF Part 71.

If there is any additional procedure that I may follow to ensure the adoption of these amendments, please advise me accordingly.

Sincerely,

Richard F. Celeste

Richard F. Celeste
Governor

/bec

Acknowledged by card. 4/18/85

(42)

DOCKET NUMBER
PETITION RULE PRM 71-10
(50 FR 4866)

DOCKETED
USNRC

'85 APR 19 P3:46

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27611

JAMES G. MARTIN
GOVERNOR

April 5, 1985

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Secretary:

Recently, a petition was filed with the Commission by the State of Wisconsin. It dealt with the matter of proposed shipments of irradiated reactor fuel.

The North Carolina State Clearinghouse distributed the Federal Register Notice to the appropriate state agencies for review and comment, and I would like to share those comments with you. In general, we do feel it is desirable that the Nuclear Regulatory Commission should take a more active role in regulating shipments of spent nuclear fuel and should issue detailed guidelines under which shipping would have to occur.

We do have some apprehension about the wisdom of opening up each and every proposed shipment of spent fuel to the possibility of a long hearing process in which not only a state or municipality but "any interested person . . . along the route" could call for a hearing and could presumably intervene. Possibly, there is a workable compromise between the public's right and need to know and the need of the nuclear industry and the commission for a procedure that is predictable and not overly burdensome. The Nuclear Regulatory Commission could hold public rule-making hearings and expand its rules for spent fuel transport after taking into consideration the public concerns, especially the concerns of state and municipal officials. The rules could establish (or update) generic criteria for designating routes and alternate routes, establishing the need to ship, evaluating risks, etc. Such an approach would allow a generic, rather than specific, examination of spent fuel shipments and thus would not pose the possibility of a hearing each time fuel is shipped. Throughout the process the input and participation of state and local officials should be sought and fully considered.

We appreciate this opportunity for input.

Best personal wishes.

Sincerely,

Jim Martin

James G. Martin

DS11
add: S. Wiggington, 4000 MNBB
James J. Henry, 1130 SS
Frank Young, AR-5037
Eric Jakel, 9604 MNBB

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PDR PRM
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APR 25 1985

Acknowledged by card.

(43)

DOCKET NUMBER
PETITION RULE PRM 71-10
(50 FR 4866)

DOCKETED
USNRC

'85 APR 23 A11:36

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Re: Docket PRM-71-10
April 2, 1985
From: Ellen Brooks
Rt 2 Box 24C
Bays Mills, WI 54631

In support Gov. Anthony Earle's proposal that the NRC establish a licensing proceeding for the transporta of spent nuclear fuel. These shipments are dangerous and require close scrutiny as well as public hearings on spent fuel shipping requests.

Thank you. Ellen Brooks

DS11
add S. Uranaker, 4000 MNBE
James J. Henry, 113055
Frank Young AR-5037
Eric Jakel, 9604 MNBE

APR 25 1985

Acknowledged by card .....

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PDR PRM
71-10 PDR

(44)

DOCKET NUMBER
PETITION RULE PRM 71-10
(50 FR 4866)
DOCKETED
USNRC

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

MARK WHITE
GOVERNOR

'85 APR 26 A11:56

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

April 22, 1985

Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Service Branch

Dear Mr. Chilk:

The following comments are submitted in response to your "Notice of Receipt of Petition for Rulemaking from the State of Wisconsin" (Federal Register, Vol. 50, No. 23, February 4, 1985, pgs. 4866-4867). Other responsibilities and commitments prevented earlier submission of these comments but we ask that you make every effort to consider them in addressing the cited Petition for Rulemaking.

Texas' concern regarding the proper shipment of spent fuel is based on two considerations. First and most important, a site in Texas has been tentatively designated as one of three to undergo detailed characterization as a potential site for the nation's first repository. Second, regardless of the location selected for disposal of spent fuel, transportation of these materials through Texas is certain to occur. Four nuclear power plants are under construction in Texas and Texas is in the transportation corridor between other potential repository sites and operating nuclear power plants.

Substantial attention has been devoted to development of transportation, equipment and other safety requirements designed to minimize the risk to the public of spent fuel shipments. The complex nature of these systems and inadequacy of relevant data render definitive assessment of the risks subject to continuing debate. It is, however, irrefutable that these operations do pose some risk and that the unnecessary and uncoordinated random shipment of these materials must be avoided.

Extensive review and monitoring of the U.S. Department of Energy program for management of spent fuel and high-level waste has clearly demonstrated the uncertainty permeating the planning for the DOE system for management of spent fuel. Numerous options including interim storage, centralized packaging and handling facilities, monitored retrievable storage, and repositories as well as numerous potential locations for these facilities which will not be soon integrated into a comprehensive management strategy demonstrate beyond

DS11 add:
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James Henry - 1130 SS
Frank Young - AR-5037
Eric Jakel - 9609 MNBB

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PRM-71-10 PDR

APR 26 1985
Acknowledged by card.....

doubt the impossibility of planning current utility shipments of spent fuel in a manner that will minimize the overall transportation and consequent risk to the public in ultimately disposing of these materials. Only after a comprehensive and reasonably predictable strategy for spent fuel management has been developed and approved can there be any possibility of analyzing the impact of such shipments on the overall risk of transportation of spent fuel. Even after such a strategy has been developed, competent review of the consequences of and need for such shipments must be conducted and used as the basis for granting or denying authorization for the shipments.

The history of difficulty in developing a system for ultimately disposing of spent fuel provides obvious incentive to those storing such material for transferring responsibility and physical possession of that material at any opportunity. For example, some power plant licensees are insisting that fuel contract provisions for storage of spent fuel at an inoperative reprocessing facility be honored. Whether or not that transfer of spent fuel will ultimately increase or decrease the overall transportation required cannot be determined at this time. In another case spent fuel is being shipped from an inoperative reprocessing facility back to the nuclear power plants where it was produced. Furthermore, there is no evidence to indicate (1) that licensees review shipment of spent fuel to in any way minimize the national requirements for such operations and assess their need, or (2) that licensees provide any opportunity for meaningful input from the affected public or from other knowledgeable interests. As stated above, these shipments should be minimized until adoption of a comprehensive management strategy allowing analysis and minimization of the overall transportation burden.

In view of these general concerns regarding the sufficiency of current transportation regulations for spent fuel, we are convinced that the concept proposed by the cited Petition for Rulemaking is valid and should be addressed in regulations promulgated by the Nuclear Regulatory Commission. This responsibility justifiably falls on the Nuclear Regulatory Commission as the focal point of regulation of nuclear materials and their use as provided by the Energy Reorganization Act of 1974 (P.L. 93-438) and the Atomic Energy Act of 1954 (P.L. 83-703).

With respect to the language proposed by the petitioner, we offer two specific comments. The proposed text provides for regulation of irradiated reactor fuel. We recommend that the rule apply also to high-level waste and "other highly radioactive material that the Commission ... determines by rule requires permanent isolation" under the provisions of the Nuclear Waste Policy Act (P.L. 97-425).

Our other concern is that the rule clearly specify that all spent fuel and high-level waste transportation activities undertaken by the U.S. Department of Energy in implementation of responsibilities delegated under the Nuclear Waste Policy Act be subject to these proposed transportation regulations. Various storage and disposal facilities that the DOE may develop require licensing by the NRC and application of transportation regulations to shipments related to use of those facilities would be entirely consistent with the Nuclear Waste Policy Act. In the absence of a binding commitment that overall transportation risk will be minimized in the DOE management strategy, the NRC should regulate these activities.

Thank you for your consideration of these comments. We look forward to reviewing your response to the Petition for Rulemaking and the comments submitted on that proposal.

Yours truly,

Dan Smith

Dan Smith, Assistant Director
Nuclear Waste Programs Office

cc: Steve Frishman, Director, NWPO
Bob Halstead, Wisconsin Division of State Energy

DOCKET NUMBER
PETITION RULE PRM 71-10 (50 FR 4866) (45)

TENNESSEE VALLEY AUTHORITY

CHATTANOOGA, TENNESSEE 37401

1630 Chestnut Street Tower II

DOCKETED
USNRC

April 24, 1985

'85 APR 29 A10:00

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555

Dear Sir:

Tennessee Valley Authority is pleased to provide comments on the Petition For Rulemaking, PRM-71-10, filed by the State of Wisconsin as noticed in the February 4, 1985 Federal Register (50 FR 4866-4867). The petitioner requested NRC to establish, through a new regulatory process, additional means for the evaluation and approval of shipments of spent fuel.

We believe the proposal to amend 10 CFR Part 71 is unnecessary given (1) the current emphasis upon design safety of spent fuel containers in 10 CFR Part 71, (2) the security provisions of 10 CFR Part 73, (3) the fact that plant licensing included spent fuel considerations and offered an opportunity for public participation, and (4) the regulations of the Department of Transportation (DOT) that pertain to spent fuel shipment. These various factors ensure that both the need for safety and environmental consequences of spent fuel shipments are adequately considered.

There is no showing that an additional evaluation would provide any increased public health and safety protection. In contrast, the expense and delays associated with an additional overlay of review and the possible adverse safety implications of routing disclosures sought by the Wisconsin petition are factors that clearly weigh against the rulemaking proposal.

The proposal is redundant of existing requirements. For example, a licensee may only ship spent fuel in accordance with its license in approved NRC shipping containers consistent with NRC regulation (e.g., 10 CFR 73.37) and pursuant to DOT safety and routing regulations. These procedures identify and address route-specific conditions that exist which might cause the public health and safety to be jeopardized from accidents or sabotage, including risks from not minimizing radiological exposure. Also, shipping casks are already subject to rigid safety evaluation.

Currently the Governor, or his designee, for each State along the proposed route is notified of and participates in the shipment

DS11 add. S Wiggington, 4000 MNBB
James q. Henry, 1130SS

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security pursuant to 10 CFR 73.37. It would appear appropriate for the State, in conjunction with its emergency response capabilities, to examine possible routes within its borders and recommend to NRC that these preselected routes be used. NRC could require these routes be used under provisions of 10 CFR 71.65. In addition, municipalities as well as the State can use DOT routing procedures to accomplish the same purposes.

Finally, TVA believes the proposal for noticing the route of a shipment of spent fuel in the Federal Register is inconsistent with safeguards requirements contained within 10 CFR Part 73. Such notification could increase the risk of sabotage to the ultimate detriment of the public health and safety.

Accordingly, Wisconsin has failed to justify why the additional delays and paperwork associated with its proposal are necessary. TVA recommends that the petition be denied.

We appreciate the opportunity to comment.

Very truly yours,

TENNESSEE VALLEY AUTHORITY

J. A. Domer

for J. W. Hufham, Manager
Licensing and Regulations